

EXHIBIT 1



Edward Balassanian

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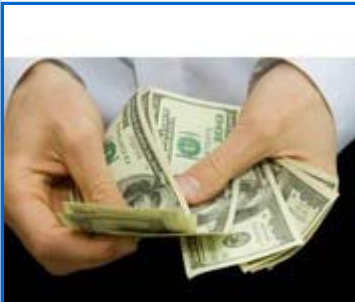
Why Failure Is The Engine Of Success

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Fifteen years ago, I started a business that took 12 agonizing years to fail. I invested \$10 million of my own money in BeComm (later called Implicit Networks) to develop a



media-rich operating system that in many ways anticipated today's smartphones and tablets. Unfortunately, the hardware and applications needed to make use of such an operating system didn't yet exist.

Like most failed entrepreneurs, I might have had nothing to show for all my effort but a lousy tee-shirt that says, "I ran a startup, too." But because I learned some crucial lessons, I now have the beginnings of a thriving business—one that is run very differently from the traditional model for building high-tech startups.

Lesson #1: Get Feedback Sooner Than Later

Our approach at Balassanian Enterprises relies on testing and feedback. Consider, for example, the old axiom that entrepreneurs must be unwaveringly fixated on a single goal. This is why so many startups are built around a single product or service that is assumed—but often not yet proven—to meet a real consumer need and offer a lucrative market opportunity.

The CEO of that startup is likewise singularly focused on getting a fully-baked product out the door as soon as possible in order to start generating revenue while at the same time building a pipeline for

future offerings. Given the limited resources in most startups, this often means that the engineers are building Version 2 of the product before Version 1 has even been tested in the market.

One problem: Given that we know that a majority of new products fail in the market, unwavering fixation looks like a bad bet. Wasn't it only two years ago, after all, that netbooks were supposed to be the next big thing? In today's smartphone-dominated landscape, who even remembers? But in that short span of time, a traditional startup can very easily launch a product that nobody wants anymore.

Lesson #2: Spread Your Risk

Venture investors spread their risk by investing in perhaps two dozen startups. That's why many are able to withstand a high failure rate and still generate healthy returns, but that approach works less well for the startups themselves.

At Balassanian, we develop multiple consumer products at once — all of them designed to blend the digital and physical worlds in new ways that provide value to consumers. We employ a disciplined and repeatable process for rapidly prototyping and market testing our ideas, which results in the early and low-cost failure of some of our products but the rapid growth of others that find market support. Instead of speeding like a train on a fixed track toward a pre-set target with little chance of hitting it, we have built into our process the ability to pivot quickly and change direction—crucial to keeping abreast of today’s rapidly shifting markets and technologies.

Lesson #3: Keep It Simple

Our product design approach is different, too. Our prototypes employ only a bare minimum of features before being tested with customers. (Many startups roll out the most fully-featured product possible to release to the public.) We’ve found that our approach reduces cost, concentrates our resources only on products that generate clear customer support, and speeds the time needed to either validate or fail a product down to weeks or at most months.

Failure, in fact, is the engine of our success. The first iteration of our luxury shopping site *Digbee.com* tried to predict what shoppers wanted based on their past purchases. But market testing revealed that our predictive algorithm simply wasn’t good enough to provide real value to users. So we developed a new service, called *Strings.com*, built around a highly-scalable crawler platform that enables users to effortlessly discover and follow their favorite designers and brands across multiple retail websites. We’ll be launching *Strings* with a unique rebate model shortly.

Lesson # 4: Protect Your IP

Another way we diverge from many startups, especially in the software field, is that we place critical importance on developing bullet-proof intellectual property—no mean feat given the backlog at the U.S. patent office. But we have learned that our ideas often have real value, and even if we can’t always productize them, perhaps someone else can. **The patents from our last unsuccessful venture, for example, have generated millions in licensing revenue for us in the last 18 months.** If you own the intellectual property, a product failure does not have to mean a business failure. (In fact, the IP can even benefit a whole industry: The patents we secured back in 1998 for our

revolutionary “pinch, swipe, and zoom” technology, for example, were later embraced by [Apple](#) in the 2006 release of its phenomenally-successful iPhone.)

Lesson #5: Organize By Job Function, Not By Product

This org-chart approach enables us to test multiple products at once and to use resources more efficiently. While the prototyping team is working on an untested product, the marketing and business development teams can be laying the groundwork for rapid growth for an already market-validated product.

This functional organization of teams also lies at the very core of our business model. When a new product idea has reached an inflection point of market support and is ready for rapid growth — like our [Post on the Wall](#) service that uses photo-collages to meld people’s virtual existence with their real-world locations, events and experiences — then we recruit an outside team to spin out the business. We’ve found that the innovation skills of a startup team are very different from the execution, operations, and management skills of a growth-focused team.

Industry observers are starting to pick up on the benefits of this new approach to launching new businesses. (See [With A Leaner Model, Startups Reach Further Afield](#), from the *New York Times*, and [The Disruptor In The Valley](#), from *Forbes*, about storied tech incubator Y Combinator.) While our approach has many similarities to the new “laboratory” or “incubator” model that the *Times* wrote about, it contains at least one key difference: We invest \$3 million to \$5 million of our own money in the businesses we spin out, rather than require the new growth team to secure early financing themselves to scale up the business. In this sense, we try to blend the best of the “labs” model with the upside of a successful VC firm.

Our approach is certainly not appropriate for every startup. But this much I do know: My failure has taught me that by working on several products at once —and then quickly killing all but the very best market-tested ones—I’ve got a much better shot at evening the odds for startup success.

[Edward Balassanian](#) is the CEO of [Balassanian Enterprises](#), a startup incubator that leverages new technology to create disruptive opportunities in consumer-facing markets.

This article is available online at:

<http://www.forbes.com/sites/edbalassanian/2012/01/11/why-failure-is-the-engine-of-success/>

EXHIBIT 2

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 IMPLICIT NETWORKS, INC.,
6 Plaintiff,

7 vs.

CASE NO. 3:10-cv-03365-SI

8 F5 NETWORKS,
9 Defendant.

10
11
12 AND RELATED ACTIONS
13

14 30(b)(6) VIDEOTAPED DEPOSITION OF
15 IMPLICIT NETWORKS, INC., THROUGH EDWARD BALASSANIAN
16 San Francisco, California
17 Thursday, May 31, 2012
18 Volume II

19 CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
20 ATTORNEYS' EYES ONLY

21 Reported by:

LORI STOKES

22 CSR No. 12732

23 Job No. 146785
24

25 PAGES 274 - 548

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1 licenses, not the royalty licenses, okay? 10:54:55

2 A Because you said royalty.

3 Q In that context, I mean the royalty
4 payment, the lump-sum payment. I can use the term
5 lump-sum payment if that's more clear for you. 10:55:09

6 A Okay. We can just talk about a time
7 frame, too. Past 2007 or before.

8 Q For Implicit's lump-sum licenses, how did
9 you compute the value of future sales for the
10 purpose of computing the total-lump-sum amount? 10:55:24

11 MR. HOSIE: Objection. Lacks foundation.

12 THE WITNESS: I'm sure my legal team had
13 many variables to consider in the calculation for
14 what would be a reasonable amount to accept in a
15 settlement. 10:55:53

16 I'm not privy to the intricacies of those
17 calculations. My role is really to assist in
18 mapping our intellectual property to existing
19 products and also approving the final settlement
20 numbers, but I trust them in their calculations and 10:56:12
21 negotiations.

22 BY MR. McPHIE:

23 Q As the corporate representative of
24 Implicit, can you explain sitting here today how
25 the value of future sales was computed for the 10:56:22

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1 purpose of computing the lump sum paid in your 10:56:28

2 lump-sum licenses?

3 MR. HOSIE: Objection. Lacks foundation.

4 Asked and answered.

5 THE WITNESS: I can be responsive to that 10:56:45

6 question, but I'm not sure I can answer it in

7 total. If you would like me to talk to you about

8 my perspective on that, I'm happy to do that.

9 BY MR. McPHIE:

10 Q Well, I don't want your conjecture. What 10:56:56

11 I'm asking is whether you can explain, sitting here

12 today, how the value of future sales was computed

13 in your lump-sum licenses.

14 MR. HOSIE: Objection. Lacks foundation.

15 Asked and answered. 10:57:14

16 THE WITNESS: So I'm not clear on which

17 future sales you're referring to. If you want to

18 be specific about a contract, I can potentially

19 answer your question.

20 BY MR. McPHIE: 10:57:29

21 Q Sure. For example, you entered into a

22 lump-sum patent license with Apple in 2007,

23 correct?

24 A That's correct. I'm not sure on that

25 date, but I think you're close. So we'll -- I 10:57:42

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1 don't think it's critical.

10:57:46

2 Q You entered into a patent license with
3 Apple, correct?

4 A Correct.

5 Q And I'll represent to you it was in 2007, 10:57:52
6 in fact.

7 A Okay, fair enough.

8 Q And at the time you entered into that
9 license, you knew that the day after that license
10 was signed -- and for years forward, for the life 10:58:04
11 of the patent -- there would be iPods sold and
12 laptop computers and all the good products that
13 Apple offers going forward, right?

14 A I was pretty confident that they would be
15 selling all of the devices that you mentioned. I 10:58:25
16 didn't -- I don't think anyone forecasted the
17 degree to which Apple would dominate the industry
18 with those products, but I was clearly aware they
19 were selling them.

20 Q Apple was doing very well in 2007, 10:58:39
21 correct?

22 MR. HOSIE: Objection. Lacks foundation.

23 THE WITNESS: As I said, I don't think I
24 could have predicted how well they would do. But,
25 by any measure, you would be hard-pressed to argue 10:58:48

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1 that they would not keep selling iPods, iPhones and 10:58:52
2 laptops.

3 BY MR. McPHIE:

4 Q And in calculating the lump-sum amount
5 that Apple would pay to gain access to Implicit's 10:59:05
6 patents, Implicit had to come to some understanding
7 of what the value of those future post license
8 sales were, correct?

9 MR. HOSIE: Objection. Lacks foundation.

10 THE WITNESS: So in 2007, our attorneys 10:59:27
11 were Goldstein, Fawcett & Prebeg. And in any one
12 of those negotiations, the counsel will recommend
13 to their client, Apple is willing to pay \$500,000.
14 We recommend that you take it.

15 Goldstein, Fawcett & Prebeg -- 10:59:45

16 MR. HOSIE: I'm sorry. I need to
17 interject here and caution the witness not to
18 disclose the substance of any communications with
19 current or former counsel.

20 THE WITNESS: Thank you. 10:59:56

21 So if I may continue with regard --
22 paying attention to what Spencer just said.

23 So their law firm is geared more towards
24 getting fast licenses without much regard for who
25 the inventor is. That wasn't consistent with the 11:00:12

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1 type of licensing program I wanted to create.

11:00:17

2 It's rare that an inventor of a patent
3 continues to own the patent as long as I did. It's
4 rare that the inventor put \$10 million of his own
5 money into creating that intellectual property.
6 And it's rare that the inventor was able to keep
7 the entire ecosystem of patents in his portfolio
8 alive for as long as I did.

11:00:32

9 It was important to me to have
10 representation that didn't believe in quick
11 licenses. So that's one of the factors.
12 Goldstein was much more aligned with quick
13 licenses, and he recommended that value to me.

11:00:47

14 In addition, there's other factors, such
15 as the financial position of the company at the
16 time. Implicit was very low on cash and, had I not
17 taken that license agreement, I would have been
18 hard-pressed to continue prosecuting my patent
19 portfolio.

11:01:00

20 Several of the patents that have issued
21 since have dramatically enhanced the value of the
22 portfolio.

11:01:17

23 In addition to that, the value of just
24 getting one of those under your belt is factored
25 in, as well.

11:01:35

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1 So all of those go towards determining 11:01:36
2 whether it's a fair license or not. But the most
3 relevant of those is truly your counsel's
4 recommendation that you should take this.

5 MR. McPHIE: What was that? 11:02:01

6 MR. HOSIE: I'm sorry?

7 MR. McPHIE: What was that?

8 MR. HOSIE: What do you mean what was
9 that?

10 MR. McPHIE: You just spoke to your 11:02:04
11 client.

12 MR. HOSIE: I did, indeed, speak to my
13 client. Are you asking me to disclose the
14 substance of privileged communication?

15 Was there a question pending? 11:02:11

16 MR. McPHIE: I'm asking you whether there
17 was some advice given about the attorney-client
18 privilege just now, or if there's a statement you
19 would like to make on the record.

20 MR. HOSIE: What I say to my client, sir, 11:02:22
21 is privileged, as you well know.

22 MR. McPHIE: What I'm asking is, did you
23 just give him advice about attorney-client
24 privilege, or was there some statement about the
25 substance of the testimony that we're giving in the 11:02:40

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1 today, Implicit actually used those factors to help 11:13:19
2 determine the amount paid under all of its
3 licenses, correct?

4 MR. HOSIE: Objection. Overbroad. Vague
5 and ambiguous. 11:13:32

6 THE WITNESS: There are numerous factors
7 that go into the determination of a license. Not
8 just for the Apple one, but for all of them.

9 The state of your patent portfolio, for
10 example. When we settled with Intel, all of our 11:13:47
11 patents-in-suit were in reexam. All claims were
12 rejected.

13 When we settled with other defendants,
14 certain patents hadn't issued yet. We have, I
15 believe, double the number of patents now than we 11:14:05
16 did early on.

17 The counsel that I have, the Hosie Rice
18 firm, believes in patents. They believe in
19 inventors. And they believe in
20 entrepreneurialship. Their recommendations for me 11:14:18
21 for licenses are far different --

22 MR. HOSIE: Again, let me caution the
23 witness. I appreciate it's a difficult line to
24 draw, which is why we may have to break to confer
25 on this -- 11:14:35

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1 MR. McPHIE: He's complimenting you. 11:14:36

2 MR. HOSIE: And I appreciate that. And I
3 thank the witness for that, and your observation,
4 sir.

5 But please, again, be very careful not to 11:14:43
6 disclose the substance of communications. Because
7 if you do -- if you do -- these defense lawyers
8 will seize on that and say, look, you waived the
9 privilege.

10 THE WITNESS: So I am not waiving 11:14:56
11 privilege, just to be clear. And my only point
12 here is that the type of counsel you have has a
13 dramatic impact on the type of recommendations you
14 get from them about the licenses and what would be
15 a fair sum. 11:15:11

16 If you have counsel that is focused on
17 quick licenses and, essentially, avoiding any kind
18 of litigation, you get very -- you get commensurate
19 settlement contracts.

20 If you have counsel that believes in the 11:15:30
21 robustness of the patent process and the robustness
22 of entrepreneurialship and the veracity of the
23 entire process, then you get commensurate
24 settlement agreements. And I think that's borne
25 out by our recent trajectory. 11:15:46

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1 BY MR. McPHIE: 11:15:49

2 Q And these are all factors that play into
3 the negotiation of a lump-sum amount for a patent
4 license, correct?

5 A They're factors that play into the 11:15:58
6 negotiation of any patent license, whether it's
7 Microsoft and AOL or Juniper and Palo Alto
8 Networks. That's how patent licenses are
9 determined.

10 When you sue somebody for infringing, you 11:16:12
11 have to come to a settlement. And those settlement
12 numbers are determined by both parties, what one is
13 willing to take, what one is willing to pay, the
14 state of the patents, the threat of a countersuit,
15 the robustness of the patents, the claims, the 11:16:25
16 overlap of the claims with a particular product,
17 the sales trajectory of those products, the
18 livelihood of those products. All of those go into
19 consideration.

20 Q Another consideration, I think you 11:16:45
21 mentioned -- well, withdrawn.

22 Another factor that goes into the
23 licensing calculation might be the financial state
24 of the company at the time; is that right?

25 A As the CEO of a company, you often have 11:17:03

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BY MR. McPHIE:

02:28:14

Q So it was possible in the 1990s, before
you conceived your invention, to modify a URL
blacklist?

MR. HOSIE: Objection. Asked and
answered.

02:28:22

BY MR. McPHIE:

Q Correct?

MR. HOSIE: Objection. Asked and
answered.

02:28:28

THE WITNESS: I think I've been pretty
clear that modifying or storing a blacklist of URLs
is not remotely related to my patent.

BY MR. McPHIE:

Q The Web Tablet for Intel, was that
something that ever was released to the market?

02:28:41

A By released to market, you mean available
for sale by consumers at a Best Buy?

Q Among other things, yes.

A I honestly don't know. I know they made
a few thousand of them. I don't know if it ever
made it to the store shelf.

02:29:14

Q Intel made a few thousand of their Intel
Web Tablets?

A That's my understanding.

02:29:31

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1 Q But you don't know what happened to them? 02:29:32

2 A I don't.

3 Q Did you ever receive any revenue --

4 per-unit revenue -- based on those Web Tablets?

5 A No. 02:29:43

6 Q Are you aware of any Intel Web Tablet
7 getting into the hands of an end user or consumer?

8 A Well, I have one.

9 Q Other than that one.

10 A Honestly, I know that they had several 02:30:05

11 thousand of them. And I think they -- I mean, I'm

12 sure they ended up in somebody's hands. I don't

13 know -- I'm quite certain that they -- none of them

14 were actually sold by any of the partners that they

15 had lined up. But whether they ended up in 02:30:21

16 people's hands outside of Intel, probably.

17 Q Can you give me an example of how you

18 would use the Intel Web Tablet to practice the

19 invention claimed in the patents-in-suit?

20 A I can. 02:30:35

21 Q Please do.

22 If it's helpful, by the way, it's right

23 over there if you want to demonstrate something.

24 A I really doubt that thing is going to

25 turn on. 02:30:50

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1 MR. BRUN: It powered up, but I didn't 02:30:52
2 try to turn it on.

3 THE WITNESS: I'll explain it. It
4 actually requires software to be running on the PC,
5 as well. So our license agreement with Intel was 02:31:02
6 to provide them with software that would run on the
7 PC and software that would run on the tablet.

8 And if I recall correctly -- so a classic
9 example of us not selling Portal, but selling a
10 solution that we built with Portal. 02:31:18

11 We found out through our effort of doing
12 business development they Intel was trying to build
13 a tablet that would allow you to browse web pages
14 and play music, and they couldn't get it to work.

15 And the reason they couldn't get it to 02:31:35
16 work is that Real Networks would not license them
17 the codec that was required to play Real Audio on
18 that device. But Intel already had a license for
19 the Real Audio codec on the PC.

20 So we built them a software solution on 02:31:53
21 the PC that essentially served as a proxy for all
22 requests that were being made by the tablet for
23 Real Audio streams on the internet.

24 We would intercept those requests coming
25 back. And then, instead of just sending them 02:32:10

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1 discussions -- any discussions I had -- regarding 04:45:03
2 anything to do with Citrix's revenue I had with my
3 counsel.

4 I, as a plaintiff, don't get to speak to
5 Citrix directly. I talk to my counsel and my 04:45:15
6 counsel only.

7 BY MR. McPHIE:

8 Q Can you tell me yes or no whether a rate
9 came up in any of the discussions with Citrix?

10 MR. HOSIE: I'm sorry. Objection to the 04:45:28
11 undefined term royalty rate. I will also object
12 because the question would inherently call for the
13 disclosure of both privileged communications and
14 the disclosure of conversations between counsel for
15 Implicit and counsel for former defendant Citrix 04:45:57
16 that were explicitly held pursuant to Federal Rule
17 of Evidence 408.

18 I will note in that regard that Citrix
19 has informed us that it objects to our disclosing
20 any such communications and has asked for the 04:46:13
21 opportunity to be heard if there's a risk of that
22 going forward.

23 BY MR. McPHIE:

24 Q Can you answer the question yes or no?

25 MR. HOSIE: I'll instruct him not to 04:46:30

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1 answer.

04:46:31

2 MR. McPHIE: Okay.

3 MR. HOSIE: Counsel, you are -- candidly,
4 you're wasting our time because you're asking the
5 same questions that are subject to a motion right
6 now.

04:46:40

7 Why don't you defer this until the Court
8 rules. You have other things to cover, do you not,
9 sir?

10 MR. McPHIE: Let's move on.

04:46:52

11 MR. HOSIE: Thank you.

12 BY MR. McPHIE:

13 Q I think HTC is next; is that right?

14 A What number are we looking at?

15 Q 122.

04:47:10

16 MR. HOSIE: If I may, we have in the room
17 counsel for former defendant Microsoft.

18 Shane, what is Microsoft's position on
19 this issue? Has Microsoft given permission for
20 Implicit to disclose my Rule 408 conversations with
21 Mike Bettinger and Isabella Fu?

04:47:45

22 MR. McPHIE: I object to this. Let's
23 move through the licenses. If there needs to be
24 discussion about that, let's not waste the witness'
25 time. Let's try to accomplish what we can in the

04:48:08

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1 time we have remaining today. That is what I would 04:48:13
2 propose.

3 MR. HOSIE: All right. Fair enough.

4 BY MR. McPHIE:

5 Q Do you have in front of you Exhibit 122? 04:48:19

6 A I do.

7 Q Is this, in fact, the license between
8 Implicit and HTC?

9 A It is a license between Implicit and HTC.

10 Q What were the HTC products that Implicit 04:48:32
11 contended infringed Implicit's patents at the time
12 of the license?

13 A I don't remember the specific name of the
14 HTC product, but it would have been one of their
15 smart phones. 04:48:54

16 Q Do you recall the line of smart phones or
17 any identifying information about which one?

18 A No.

19 Q Going back, I think we may have skipped
20 this for AMD. But with respect with AMD -- let me 04:49:14
21 withdraw the preamble.

22 What are the AMD projects that allegedly
23 infringed Implicit's patent at the time of the AMD
24 license?

25 A I believe it was a media framework. It 04:49:33

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1 was basically a software package that AMD made 04:49:38
2 freely available on their website for anybody to
3 download without having to buy a chip.

4 Q Anything else?

5 A No. I don't think so. 04:49:51

6 Q Exhibit 123 is Implicit's license with
7 IBM, correct?

8 A We're done with 122?

9 Q For now, yes.

10 A Yes. 04:50:16

11 Q What are the IBM products that allegedly
12 infringed Implicit patents at the time of the IBM
13 license?

14 MR. HOSIE: I would ask that the witness
15 take the time to read the document before Counsel 04:50:35
16 asks him questions on it.

17 THE WITNESS: I honestly don't remember
18 the specific name of the product, but it was a web
19 application server that IBM has as part of their
20 massive product portfolio. 04:51:19

21 BY MR. McPHIE:

22 Q Anything else?

23 A I don't believe so.

24 Q Is Exhibit 124 the RealNetworks license
25 agreement with Implicit? 04:51:43

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1 A I have it.

04:51:54

2 Q What are the RealNetworks products that
3 allegedly infringed Implicit's patents at the time
4 of this license?

5 MR. HOSIE: I would ask that the witness
6 take the time to read the document before answering
7 questions about it.

04:52:03

8 THE WITNESS: I believe Real had a
9 freely-available media framework that we accused.

10 BY MR. McPHIE:

04:52:59

11 Q What was it called?

12 A I think it was called Real System or
13 something analogous to that. I don't remember the
14 exact name of the -- it's not a consumer product
15 that you would download in that manner. It's
16 something that developers would use.

04:53:13

17 Q Were there any other RealNetworks
18 products accused of infringement?

19 A I don't believe so.

20 Q Exhibit 125 is the license between
21 Microsoft and Implicit, correct?

04:53:37

22 A I really can't read this, but it appears
23 to be. I'm not sure why it's so small.

24 Q My understanding is this is how it was
25 produced to us.

04:54:01

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1 A It appears to be a license agreement 04:54:03
2 between Implicit and Microsoft.

3 Q What were the Microsoft products accused
4 of infringing Implicit's patents at the time of
5 this license? 04:54:14

6 MR. HOSIE: Excuse me. Let me object
7 that this is not, in fact, an authentic copy of a
8 final Microsoft agreement. I can see it's
9 captioned Exhibit A on the top. So it's a document
10 fragment. 04:54:42

11 MR. McPHIE: Maybe we can identify --
12 well, let's discuss this off line, why don't we.

13 MR. HOSIE: Sure. And the question
14 pending?

15 BY MR. McPHIE: 04:54:59

16 Q What were the Microsoft products accused
17 of infringing Implicit's patents at the time of
18 this license?

19 A I believe we filed a complaint against
20 Windows Server and WFP, which is the Windows 04:55:14
21 filtering platform.

22 Q Anything else?

23 A Actually, I'm sorry, it wasn't Windows
24 Server, it was asp.net. So we accused asp.net and
25 we accused Windows filtering platform. 04:55:49

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1 Q Were there any other Microsoft products 04:55:54
2 accused of infringing Implicit's patents?

3 A I don't believe so.

4 Q 126 is the license between NVIDIA and
5 Implicit, correct? 04:56:14

6 A That's correct. This doesn't seem to be
7 a final licensing agreement, though.

8 MR. HOSIE: Again, I would ask that the
9 witness read the document before answering
10 questions about it. 04:56:28

11 THE WITNESS: I understand. So, no, this
12 is not a licensing agreement between Implicit and
13 NVIDIA.

14 BY MR. McPHIE:

15 Q Is that your signature on page 9? 04:56:36

16 A It is. But as you can see, it's not an
17 executed license agreement. There's no NVIDIA
18 signature. There's no date on the front of it. So
19 it's not a final executed copy.

20 Q Well, you executed it, right? 04:57:00

21 A I've signed this version of it. I don't
22 know if there was a version after this. That
23 happens often. But I'm just stating that this is
24 not a final executed license agreement.

25 MR. HOSIE: Counsel, will you represent 04:57:14

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1 on the record that this is the final, 04:57:16

2 fully-executed license agreement?

3 MR. McPHIE: I would hope that between
4 the two of you, I could get an answer to that.

5 MR. HOSIE: Well, are you representing 04:57:28
6 that it is? You're the one who marked it and
7 showed it to this witness.

8 MR. McPHIE: I received from Implicit a
9 document beginning with Bates number IMP094911.

10 If you are now representing that this is 04:57:38
11 not, in fact, a final license agreement, I would
12 ask that the final executed license agreement
13 between NVIDIA and Implicit be produced
14 immediately.

15 MR. HOSIE: I don't know if it is, 04:57:53
16 Counsel. You just marked it and showed it. So I
17 will go back and look at it.

18 But I will note for the record that it
19 appears to be partially executed and undated. And
20 I will talk to Implicit's counsel at the time and 04:58:04
21 see if this is the final.

22 MR. McPHIE: Let's get the final
23 versions. And just to be clear, Juniper would
24 request the final executed copies of all license
25 agreements between Implicit and third parties. 04:58:20

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1 MR. HOSIE: And this may be such. I 04:58:23
2 can't tell. I just do note that it was partially
3 executed. It wasn't on my watch.

4 BY MR. McPHIE:

5 Q What were the NVIDIA products accused of 04:58:35
6 infringing Implicit's patents at the time of the
7 NVIDIA license?

8 A I believe it was NVIDIA's SDK for
9 developing applications that talk directly to their
10 hardware and graphics accelerator and media -- 04:58:54
11 media chip set.

12 Q What was it called?

13 A It had the initials NV in it, I can
14 remember that, for NVIDIA. But I don't know the
15 specific name. It was an SDK that they made 04:59:24
16 available free for developers to build applications
17 that were accelerated on the NVIDIA chip set.

18 Q Are there documents or other information
19 available to Implicit that would allow you to
20 provide a definitive answer to that question? 04:59:39

21 A Possibly. I don't know offhand. I would
22 have to go back and look.

23 Q But you believe it's likely that this
24 information is available to Implicit, correct?

25 MR. HOSIE: Objection. Mischaracterizes 04:59:59

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1 the testimony. 05:00:00

2 THE WITNESS: I didn't say it was likely.

3 I said it's possible that there's information that

4 would help me remember what the spec name of the

5 SDK that NVIDIA provides with their chips to

05:00:10

6 application developers.

7 I don't remember the name. There might

8 be documentation on the web or elsewhere that I

9 could look at to remember.

10 BY MR. McPHIE:

05:00:22

11 Q Exhibit 127 is a patent license between

12 Implicit and Oracle, correct?

13 A It appears to be a fully-executed license

14 agreement between Implicit and Oracle.

15 Q What were the Oracle products accused of

05:00:49

16 infringing Implicit's patents at the time of this

17 license?

18 A It would be the Oracle web application

19 server. You're going to ask me the name of it, and

20 I'm trying to remember the name. It was their

05:01:11

21 product that competes with IBM's web application

22 server that competes with Sun's ASP and Microsoft's

23 asp.net. I don't remember the specific trade name,

24 but that's basically what the product was.

25 Q Exhibit 128 is the license agreement

05:01:37

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1 between Implicit and Palm, correct?

05:01:43

2 A That's correct.

3 Q What were the Palm products accused of
4 infringing Implicit's patents at the time of this
5 license?

05:02:17

6 MR. HOSIE: Objection. Lacks foundation.
7 Patents plural.

8 THE WITNESS: So we accused them of
9 infringing a single patent, the '349 patent, direct
10 manipulation of displayed content. And their
11 product was the Palm OS.

05:02:32

12 BY MR. McPHIE:

13 Q Exhibit 129 is the license agreement
14 between Implicit and RMI, correct?

15 A It's more than that. It includes a U.S.
16 District Court Western District of Washington
17 Seattle division Stipulated Motion for Dismissal of
18 RMI with Prejudice and Proposed Order stapled
19 on -- I guess that's the exhibit to it.

05:03:35

20 Q Is Exhibit 129 the license agreement
21 between RMI and Implicit?

05:04:03

22 A I apologize. I didn't realize that was
23 an exhibit to this license agreement.

24 It appears to be a license agreement
25 between Implicit and RMI.

05:04:29

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1 Q What are the RMI products that were 05:04:31
2 accused of infringing Implicit's patents at the
3 time of this license?

4 A RMI had purchased a chip set from AMD
5 that included a media framework. And that media 05:04:47
6 framework is what we accused.

7 UMF, I believe, is what the name of it
8 was. I don't remember what that stood for. But it
9 was a media framework for their AU1200 chip set,
10 which they renamed when they bought it from AMD. 05:05:19
11 So the name is probably different now.

12 Q Anything else?

13 A I don't think so.

14 Q Exhibit 130 is a license agreement
15 between SAP and Implicit, correct? 05:05:44

16 A It doesn't seem to be dated, but it does
17 seem to be fully executed.

18 Q Exhibit 130 is a license agreement
19 between SAP and Implicit, correct?

20 A It is an undated, signed-by-both-parties 05:06:05
21 document that could very well be the final
22 fully-executed patent license and settlement
23 agreement between SAP and Implicit.

24 MR. McPHIE: I will reiterate my request
25 for copies of all final and executed license 05:06:20

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1 agreements. 05:06:25

2 MR. HOSIE: I can represent that this is
3 the final and executed license agreement, and it's
4 dated on page 42.

5 MR. McPHIE: Thank you. 05:06:35

6 Q What were the SAP products accused of
7 infringing Implicit's patents at the time of this
8 license?

9 A It would be SAP's web application server.

10 Q Anything else? 05:06:51

11 A I don't believe so.

12 Q I think this is the last one, correct?

13 A 131 is my final document in front of me.

14 MR. HOSIE: Excuse me. Last one in the
15 stack? 05:07:08

16 MR. McPHIE: Last one in the stack.

17 MR. HOSIE: Thank you.

18 MR. McPHIE: I wasn't attempting anything
19 tricky with that question.

20 MR. HOSIE: How uncharacteristic of you. 05:07:15

21 MR. McPHIE: I was trying to generate
22 some enthusiasm here for getting through them all.

23 MR. HOSIE: We appreciate the effort,
24 sir.

25

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1 BY MR. McPHIE: 05:07:26

2 Q Exhibit 131 is a license agreement
3 between Implicit and Sybase, correct?

4 A It does appear to be a fully-executed
5 license agreement between Sybase and Implicit 05:07:47
6 Networks.

7 Q What are the Sybase products -- well,
8 withdrawn.

9 What were the Sybase products accused of
10 infringing Implicit's patents at the time of this 05:07:57
11 license?

12 A It would be Sybase's web application
13 server.

14 Q Anything else?

15 A I don't believe so. 05:08:10

16 MR. HOSIE: Counsel, it is now after
17 5:00.

18 Is this a good time to break for the day?

19 MR. McPHIE: We can break for today.

20 Have you been able to identify available dates for 05:08:45
21 us to continue the 30(b)(6) deposition of Implicit?

22 MR. HOSIE: We have not. We will
23 continue to work toward that. I have under
24 advisement for your request for four additional
25 days. And I think it makes sense for all the 05:08:59

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1 lawyers to have a deposition scheduling call given 05:09:03
2 the number of parties that have to be involved in
3 the continuation and conclusion of the 30(b)(6),
4 the scheduling and continuation of the individual
5 30(b)(6) on behalf of HP, F5 and Juniper and the 05:09:15
6 conclusion of the witness' deposition in his
7 percipient capacity, as a fact witness.

8 MR. McPHIE: To be perfectly clear, what
9 we indicated was it was possible we could get
10 through the remaining individual Juniper topics, 05:09:34
11 individual F5 topics, individual HP topics and the
12 remaining topics and subjects for the -- what we've
13 been calling the common topics, as well as
14 individual questions for the three defendants,
15 within four days possibly, and reserving a fifth 05:09:53
16 day is what we requested, should it prove
17 necessary.

18 What we would ask is that you provide us
19 those dates by tomorrow, if possible. Simply
20 because, as you indicated, we're getting pretty 05:10:12
21 late in the discovery period. And once we get
22 these remaining dates in place, I think that will
23 significantly simplify the remaining scheduling
24 issues.

25 MR. HOSIE: If I might, since you have 05:10:28

1 fair in January 1997. 09:23:32

2 A Yes. 09:23:37

3 Q Is this the session that we saw a press release 09:23:38

4 for in our earlier deposition? 09:23:46

5 A As I mentioned, that press release was marketing 09:23:49

6 hyperbole. So, no, this session is what it says it was. 09:23:56

7 We had a recruiting fair at the Four Seasons Hotel. The 09:24:00

8 press release talked about industry pundits and media 09:24:05

9 people of which no one was present. So, no, the press 09:24:09

10 release did not describe this. This was a recruiting 09:24:14

11 fair. 09:24:18

12 Q Were there -- were there two separate events that 09:24:18

13 happened in January 1997? 09:24:22

14 MR. HOSIE: Objection. Asked and answered. 09:24:23

15 BY MR. McPHIE: 09:24:23

16 Q Excuse me. 09:24:25

17 A Two separate events? 09:24:26

18 Q One a recruiting fair, and one the event described 09:24:28

19 in the press release. 09:24:31

20 A No, as I mentioned when you asked me about the 09:24:32

21 press release last time, that never happened. There were 09:24:35

22 no -- there was no event at the Four Seasons that media 09:24:38

23 pundits were invited to or industry people. The only 09:24:41

24 people that were invited were people that I was recruiting 09:24:45

25 who were all there under NDA. 09:24:48

1 Q Who are the top Ph.D. graduates in computer 09:24:50
2 science and engineering from across the country, referred 09:24:54
3 to in Exhibit 132? 09:25:00
4 A I don't remember their names specifically. They 09:25:02
5 were students that I recruited from various universities. 09:25:06
6 Q There's a statement, "First prototypes of Portal 09:25:10
7 ('163) are up and running by summer of 1997." You see 09:25:18
8 that there? 09:25:23
9 A I do. 09:25:23
10 Q Was the first embodiment of the '163 patent up and 09:25:24
11 running by summer of 1997? 09:25:29
12 A As we stated in our interrogatory responses, the 09:25:32
13 reduction to practice wasn't until '98 that we had all the 09:25:37
14 elements of the patent, all the claim elements reduced to 09:25:41
15 practice. So we had a prototype up and running, but it 09:25:46
16 didn't embody all of the elements of the claim. 09:25:49
17 Q Which elements were missing as of the summer of 09:25:51
18 1997 in the Portal prototype? 09:25:55
19 A I don't remember. It was a prototype, so a lot of 09:25:57
20 the ideas that we had conceived were being held together 09:26:05
21 with duct tape at that point. 09:26:09
22 Q What do you mean, "held together with duct tape"? 09:26:10
23 A When you develop a system as complex as this was, 09:26:15
24 oftentimes you don't have all the pieces working, so you 09:26:19
25 fake it -- or not fake it, but you create scaffolding so 09:26:24

1 that you can get to that part of the building later. 09:26:29

2 Q And that is what you had in the summer of 1997? 09:26:34

3 MR. HOSIE: Objection. Asked and answered. 09:26:37

4 THE WITNESS: The definition of the word 09:26:39

5 "prototype" is essentially that it is not fully 09:26:42

6 functional, so yes, we had a prototype of Portal up and 09:26:45

7 running by the summer of '97. 09:26:48

8 BY MR. McPHIE: 09:26:50

9 Q If you turn to the next page, there's a statement, 09:26:52

10 "BeComm secures the Intel Tablet contract." 09:26:58

11 A Yes. 09:27:02

12 Q And this is under "January 2000 - 2001." 09:27:02

13 A I see it. 09:27:07

14 Q The Intel Tablet was, in fact, never released; 09:27:08

15 correct? 09:27:13

16 MR. HOSIE: Objection. Asked and answered. 09:27:13

17 THE WITNESS: As I stated when you asked me that 09:27:17

18 question previously, approximately 3,000 of the Tablet 09:27:19

19 devices were manufactured. I don't know what happened to 09:27:24

20 them at that point. I don't know if they were put on 09:27:27

21 store shelves or not. I assume they were not. 09:27:31

22 BY MR. McPHIE: 09:27:33

23 Q So you do not know whether the Intel Tablet was, 09:27:37

24 in fact, released or not; correct? 09:27:39

25 MR. HOSIE: Objection. Asked and answered. 09:27:42

1 THE WITNESS: Released is a vague term. Intel 09:27:44
2 built the Tablet. Whether end users bought them through 09:27:47
3 Best Buy, or whatever the retail channels were, I don't 09:27:50
4 know. 09:27:50
5 BY MR. McPHIE: 09:27:53
6 Q So sitting here today, you cannot say whether the 09:27:53
7 Intel Tablet was, in fact, released? 09:27:56
8 MR. HOSIE: Objection. 09:27:58
9 BY MR. McPHIE: 09:27:58
10 Q Correct? 09:27:59
11 MR. HOSIE: Objection. Asked and answered. 09:27:59
12 THE WITNESS: I don't know what you mean by 09:28:00
13 "released." 09:28:02
14 BY MR. McPHIE: 09:28:04
15 Q There is an image of a -- it appears to be a check 09:28:08
16 on this slide. Do you see that there? 09:28:13
17 A I do. 09:28:16
18 Q What is that check? 09:28:17
19 A It's hard to tell from this image, but I'm 09:28:18
20 assuming that is the check that Intel wrote us for the NRE 09:28:24
21 portion of the Tablet contract. 09:28:28
22 Q And what was the amount of the check? 09:28:31
23 A I don't remember exactly. I'd have to look at the 09:28:34
24 actual photograph of the original check. 09:28:39
25 Q And just to be clear, when you say "NRE," what do 09:28:41

1 you mean? 09:28:44

2 A The nonrecurring engineering portion. 09:28:45

3 Q There's a statement that BeComm had a partnership 09:28:47

4 in place with Wind River. Do you see that? 09:28:52

5 A I do. 09:28:55

6 Q What was the nature of your partnership with Wind 09:28:56

7 River? 09:29:00

8 A Wind River developed the VxWorks -- V-x, the 09:29:00

9 letters, Works -- operating system that was actually 09:29:07

10 running on the Tablet, and we worked with them to port 09:29:10

11 Portal so it would run on top of VxWorks. And we agreed 09:29:14

12 with them that we would jointly pursue customer 09:29:19

13 opportunities where VxWorks was the operating system of 09:29:25

14 choice and Portal would be the communication and 09:29:28

15 networking stack. 09:29:32

16 Q Did you do any other projects with Wind River? 09:29:37

17 MR. HOSIE: Objection. Vague as to time. 09:29:41

18 THE WITNESS: If you mean projects as in the Intel 09:29:43

19 Tablet, no, we did not do any other commercial -- nothing 09:29:46

20 went as far as the Intel Tablet. That was our most -- I 09:29:51

21 don't want to use the word "successful" because it didn't 09:29:55

22 end up becoming a product you could go buy in the store, 09:29:58

23 but we didn't go that far with them, no. 09:30:02

24 BY MR. McPHIE: 09:30:05

25 Q Did you receive revenue from Wind River? 09:30:05

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1 A Both. We had plastic models that looked like the 09:32:03
2 end product would look and then we had functioning 09:32:06
3 products that did not look like the end product looked. 09:32:09
4 Q Did you ever have any functioning products that 09:32:13
5 had the appearance as designed by Frog? 09:32:18
6 A Certainly we had things that had the appearance 09:32:26
7 but not the actual plastic that Frog designed. 09:32:27
8 Q Did any of these products made in partnership with 09:32:31
9 Frog make it to market? 09:32:34
10 A And just to be clear, we paid Frog Design, so they 09:32:38
11 did not do this on their own nickel. So they were a 09:32:41
12 vendor under contract by us. And no, none of those 09:32:44
13 products -- we were not successful in selling those 09:32:48
14 products. 09:32:52
15 Q Did Implicit have a partnership with DLink in 09:32:52
16 2000, 2001? 09:32:57
17 A DLink was interested in our communications 09:33:00
18 stack -- I say stack synonymously with operating system -- 09:33:04
19 and was looking at opportunities to develop gateways for 09:33:09
20 their customers using our software, so the partnership. 09:33:14
21 They were also looking at building handheld devices such 09:33:18
22 as portable media players. So given that they are an 09:33:22
23 ODM -- which means they're an original device 09:33:26
24 manufacturer. They create devices that don't have their 09:33:29
25 name on them, on behalf of other customers -- they, like 09:33:31

1 other Asian manufacturers, would look for software that 09:33:38
2 they could use to create additional value in their 09:33:43
3 designs, and that was the extent of our partnership. 09:33:46
4 Q Were any products made or designed as a result of 09:33:51
5 your partnership with DLink? 09:33:55
6 A I believe they made a prototype portable media 09:33:57
7 player, probably using an Intel processor and the VxWorks 09:34:02
8 operating system. I don't remember for sure, but they 09:34:07
9 never sold anything using our software. 09:34:09
10 Q Did you receive any money from DLink as a result 09:34:12
11 of this partnership? 09:34:16
12 A I don't believe so. We might have received a 09:34:18
13 little bit of co-marketing for an event that they 09:34:22
14 produced, but I can't remember. 09:34:28
15 Q When you say "a little bit," can you estimate the 09:34:29
16 amount? 09:34:34
17 A It would have been a few thousand. 09:34:34
18 Q Who was your main contact at DLink? 09:34:39
19 A I don't remember. 09:34:41
20 Q Who was Implicit's main contact at Frog? 09:34:47
21 A It was somebody in business development. I can't 09:34:51
22 remember his name. And then also somebody in the design 09:35:01
23 group who actually ran the design team, and I don't 09:35:04
24 remember his name. 09:35:06
25 Q Who was Implicit's main contact at Wind River? 09:35:07

1 A I believe that was Chris Perrot. I think that was 09:35:10
2 his name. 09:35:22

3 Q In 2000 to 2001, BeComm also had a partnership 09:35:22
4 with Go-Video; correct? 09:35:29

5 A That's right. 09:35:31

6 Q What was the nature of your partnership with 09:35:33
7 Go-Video? 09:35:37

8 A Go-Video was trying to develop a media player with 09:35:38
9 a full ecosystem, including digital rights management and 09:35:51
10 a catalog service, so you could pick movies to play on 09:36:01
11 your media player, as well as music. So they were 09:36:04
12 essentially trying to build iTunes, and they were 09:36:08
13 interested in using our software to develop that. They 09:36:10
14 were underfunded and were unable to actually see their 09:36:14
15 vision realized. 09:36:16

16 Q Were any products made as a result of your 09:36:21
17 partnership with Go-Video? 09:36:24

18 A No. 09:36:25

19 Q Did you make any money from Go-Video as a result 09:36:28
20 of your partnership with them? 09:36:32

21 A No. 09:36:34

22 Q BeComm had a partnership with Sprint in the 09:36:35
23 2000-2001 time frame? 09:36:43

24 A Our relationship with Sprint was exactly as I 09:36:45
25 described before. They had various groups evaluating our 09:36:51

1 software for -- primarily from the perspective of their 09:36:54
2 labs group, and one of the groups internally there in 2000 09:37:02
3 was interested in using our software for a headend gateway 09:37:06
4 for the home. And our relationship with them was really 09:37:10
5 to try to evaluate how we could convince the business 09:37:15
6 units to use what they were trying to develop along with 09:37:18
7 our software. So it was more of an internal sales effort 09:37:23
8 than it was an external sales effort. 09:37:26

9 Q Were your efforts with Sprint regarding headend 09:37:28
10 gateways successful? 09:37:32

11 MR. HOSIE: Objection. Vague and ambiguous. 09:37:34

12 THE WITNESS: We learned a lot about the home 09:37:36
13 networking goals that companies like Sprint would have. 09:37:40
14 We learned a lot about how to build and design a gateway, 09:37:44
15 which we wouldn't have received that kind of knowledge if 09:37:48
16 we hadn't had that relationship with them. So in that 09:37:52
17 respect, it was successful. They are not the type of 09:37:54
18 company that was going to do anything speculative, so the 09:37:57
19 odds of them shipping anything were relatively slim. So 09:38:01
20 we didn't have any aspiration of them actually building 09:38:06
21 anything with our product. For us, it was more of a 09:38:10
22 business development opportunity. So in that respect, 09:38:12
23 yes, I do think it was successful. 09:38:15

24 BY MR. McPHIE: 09:38:17

25 Q There was no product that was ever built or that 09:38:17

1 shipped as a result of this partnership with Sprint for 09:38:20
2 the headend gateway; correct? 09:38:25
3 A That's correct. 09:38:28
4 Q Did you receive any money from Sprint as a result 09:38:38
5 of this project? 09:38:40
6 A No. 09:38:41
7 Q Was there any agreement with Sprint, a written 09:38:41
8 contract, reflecting this partnership? 09:38:51
9 A I don't believe so. 09:38:53
10 Q Was there any written agreement reflecting the 09:38:57
11 partnership between Implicit and Go-Video? 09:39:03
12 A Outside of a nondisclosure agreement and effort by 09:39:09
13 them and us jointly to pursue common customers, no. 09:39:13
14 Q Were there written agreements reflecting 09:39:20
15 Implicit's partnership with any of the companies listed 09:39:22
16 here under January 2000 to 2001? 09:39:26
17 A Well, all of them signed nondisclosure agreements 09:39:29
18 and all of them signed licensing agreements which allowed 09:39:33
19 them to evaluate our technology in-house. So there 09:39:37
20 were -- there were definitely agreements in place, but the 09:39:41
21 goal of our arrangements with them was to find common 09:39:44
22 customers, and until we closed on a common customer, there 09:39:49
23 wouldn't be an agreement. The agreement would be specific 09:39:54
24 to a customer. So they had, in each case, an agreement 09:39:56
25 that allowed them to evaluate, test, and develop to our 09:39:59

1 software platform, and that was as far as we would ever 09:40:05
2 take an agreement in a partnership. 09:40:09

3 Q In 2000 to 2001, Implicit had a partnership with 09:40:14
4 RealNetworks; correct? 09:40:18

5 A That's correct. 09:40:19

6 Q What was the nature of that partnership? 09:40:21

7 A Well, it started with the Intel Tablet because we 09:40:23
8 required the use of a Real codec on the PC, and Real's SDK 09:40:28
9 to convert the real audio stream into PCM, which we were 09:40:36
10 then compressing and sending to the Tablet. So we had an 09:40:41
11 agreement in place with them to use their SDK. We had an 09:40:44
12 agreement in place with them that allowed us to use their 09:40:47
13 SDK in the software package that we subsequently delivered 09:40:52
14 to Intel. We also had discussions with them about jointly 09:40:57
15 pursuing customers. There was some degree of 09:41:00
16 competitiveness between the two companies, so that was the 09:41:08
17 extent of the agreement between RealNetworks and Implicit. 09:41:11

18 Q And when you say "competitiveness between the two 09:41:15
19 companies," you mean competitiveness between RealNetworks 09:41:20
20 and Implicit; correct? 09:41:23

21 A Correct. 09:41:25

22 Q Did Implicit ever build a product as a result of 09:41:26
23 its partnership with RealNetworks? 09:41:33

24 A As I mentioned, we delivered a software stack to 09:41:35
25 Intel for the PC and for the Intel Tablet that included 09:41:39

1 the RealNetworks SDK, and that was a result of our 09:41:42
2 agreement with them. 09:41:47

3 Q Was there any other product built as a result of 09:41:48
4 Implicit's partnership with RealNetworks other than the 09:41:51
5 Intel Tablet? 09:41:55

6 A If, by "product," you mean something that shipped, 09:41:56
7 no. 09:41:59

8 Q Implicit had a partnership with a company called 09:42:01
9 Bsquare in the 2000 to 2001 time frame; correct? 09:42:08

10 A That's correct. 09:42:11

11 Q What was the nature of Implicit's partnership with 09:42:12
12 Bsquare? 09:42:16

13 A Bsquare was a Windows CE, which was Microsoft's 09:42:17
14 embedded operating system at the time. They were a 09:42:24
15 Windows CE preferred developer. So companies that wanted 09:42:26
16 to develop devices using Windows CE would hire Bsquare to 09:42:31
17 optimize Windows for their platform. Our partnership with 09:42:37
18 them included, obviously, a nondisclosure agreement, a 09:42:41
19 license agreement allowing them to use and evaluate our 09:42:47
20 software internally. They also partnered with us in 09:42:50
21 porting Portal to Windows CE. So they helped us get it up 09:42:55
22 and running on Windows CE, and we jointly pursued customer 09:43:02
23 opportunities with Bsquare. 09:43:06

24 Q Was Portal successfully ported to Windows CE as a 09:43:08
25 result of your partnership with Bsquare? 09:43:15

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1 Q So none of the partners listed in Exhibit 132, 09:44:50
2 under "January 2000 - 2001," had any revenue associated 09:44:56
3 with them; correct? 09:45:01

4 MR. HOSIE: Objection. Asked and answered. 09:45:02

5 THE WITNESS: The partnerships were all focused on 09:45:04
6 using our software to find joint customers. At that time, 09:45:07
7 which was probably the worst time in the history of 09:45:10
8 consumer electronics to go and find customers, we had a 09:45:13
9 significant array of companies out there looking for 09:45:17
10 customers. And the goal was to use our software to build 09:45:20
11 solutions for those customers using whatever product these 09:45:23
12 vendors could bring to the table. In the case of Wind 09:45:27
13 River, it was the VxWorks operating system; in the case of 09:45:33
14 Frog Design, it was plastics and industrial design. In 09:45:34
15 the case of DLink, it was their ODM manufacturing; in the 09:45:36
16 case of Go-Video, it was their handheld media player; in 09:45:40
17 the case of Sprint, it was their headend and their home 09:45:44
18 gateway, which they would only be able to sell if they -- 09:45:47
19 a provider such as Comcast wanted it. So, again, that 09:45:52
20 would be a joint partnership to try and go get a customer. 09:45:55
21 RealNetworks was a bit of an oddball because we 09:45:57
22 actually licensed their SDK as part of a solution that we 09:46:01
23 delivered to Intel. Bsquare, again, was essentially a 09:46:04
24 software vendor that wanted to partner with us to go and 09:46:11
25 find joint customers. And Comcast, I'm sure you have 09:46:14

1 questions, so I'll defer that to your questions. 09:46:18

2 BY MR. McPHIE: 09:46:20

3 Q And, in fact, Implicit did not receive any revenue 09:46:20

4 as a result of its partnerships with the companies listed 09:46:24

5 in Exhibit 132 under "January 2000 - 2001"; correct? 09:46:27

6 MR. HOSIE: Objection. Asked and answered. 09:46:33

7 THE WITNESS: No, that's not true. Our 09:46:35

8 partnership with Wind River resulted in revenue that we 09:46:38

9 received from Intel. They -- without them, it would have 09:46:40

10 been impossible for us to deliver the Wind River Tab- -- 09:46:43

11 of the Intel Tablet. They were also instrumental in 09:46:47

12 getting us the second contract with Intel with the 09:46:50

13 consumer division that was a much more lucrative contract. 09:46:53

14 Our relationship with RealNetworks also allowed us to 09:46:56

15 provide a solution for the Intel Tablet. Our relationship 09:47:03

16 with Wind River and Bsquare was instrumental in us getting 09:47:07

17 a contract with Thomson Multimedia. In both those cases, 09:47:13

18 an operating system is required. So we definitely 09:47:18

19 benefited from those partnerships. 09:47:22

20 BY MR. McPHIE: 09:47:24

21 Q How much revenue did Implicit receive in the 09:47:24

22 January 2000 to 2001 time frame as a result of its 09:47:30

23 partnerships with the companies listed here in Exhibit 09:47:36

24 132? 09:47:41

25 A I don't know the exact number. I believe we've 09:47:41

1 produced all the revenue that we've received. All of the 09:47:50
2 revenue that we received in that time frame was the result 09:47:53
3 of these partnerships, so if you just look at our books 09:47:56
4 from 2000 to 2001 or whatever we produced to you, any 09:47:59
5 revenue that we got, we got through these partners. 09:48:02
6 Q Who is Implicit's contact at RealNetworks? 09:48:06
7 A I don't remember. 09:48:14
8 Q Who was Implicit's contact at Bsquare? 09:48:15
9 A The CEO of Bsquare, Bill Baxter. 09:48:20
10 Q What was the nature of BeComm's partnership with 09:48:25
11 Comcast? 09:48:33
12 A Comcast had put out an RFP asking for various 09:48:33
13 vendors to propose a home -- a complete home solution that 09:48:38
14 included a firewall, proxy, gateway, media management, and 09:48:43
15 security appliance, if you will, and we, in partnership 09:48:51
16 with Wind River, responded to that RFP and proposed a 09:48:56
17 solution that combined Wind River's operating system as 09:49:04
18 the embedded OS with our operating system on top of it as 09:49:09
19 the media networking and communication stack. 09:49:14
20 Q And is that what is referred to a little further 09:49:19
21 down on the page where it says, "BeComm develops an 09:49:22
22 integrated gateway solution for Comcast"? 09:49:26
23 A Yes. 09:49:30
24 Q What did Comcast ultimately do with the integrated 09:49:34
25 gateway solution that Implicit developed? 09:49:37

1 A They tested it. So as with any of these very big 09:49:41
2 MSOs -- MSO meaning multiple service operator, or 09:49:48
3 multiservice operator -- they put it through exhaustive 09:49:52
4 and tedious tests that typically go on for a very long 09:49:58
5 time. So they tested it in-house, and that was the extent 09:50:05
6 of which they used it. 09:50:10
7 Q Was the integrated gateway solution that Implicit 09:50:11
8 developed for Comcast ever released to the public? 09:50:16
9 A No. 09:50:20
10 Q Going to the next page, there is a subtitle "2002 09:50:21
11 - 2006." You see that there? 09:50:36
12 A I do. 09:50:38
13 Q Did BeComm consult for AMD from 2002 to 2006? 09:50:38
14 A We -- by "consult," what we mean there is they 09:50:45
15 hired us under contract to port our operating system to 09:50:53
16 the Au1200 chipset, and they paid us for that work. 09:50:58
17 Q How much did AMD pay Implicit for that work? 09:51:04
18 A I don't remember the exact number, but it was 09:51:06
19 hundreds of thousands, somewhere in that range. 09:51:11
20 Q Other than porting your operating system to an AMD 09:51:14
21 chipset, did you do any other projects for AMD? 09:51:24
22 A We developed a complete media player solution, 09:51:27
23 including a user interface, a content synchronization 09:51:30
24 system, and movie, music and photo playback environment 09:51:36
25 that included the ability to connect with various home 09:51:43

1 network devices and provide an integrated media experience 09:51:47
2 for the user. 09:51:51

3 Q Were any of the projects developed as a result of 09:51:55
4 the AMD consultation ever released to the public? 09:52:00

5 A I believe AMD provided an SDK that included our 09:52:06
6 stack as part of a complete solution, including a chipset 09:52:12
7 to ODMs and OEMs. AMD was not in the end consumer 09:52:17
8 business, so they would never sell product direct to a 09:52:23
9 consumer. Their job was to sell product to manufacturers. 09:52:26
10 So they did release it. 09:52:30

11 Q Essentially AMD provided an SDK that included 09:52:34
12 Strings; is that right? 09:52:39

13 A And a chipset. 09:52:40

14 Q AMD provided an SDK that included Strings and a 09:52:42
15 chipset; correct? 09:52:49

16 A AMD sells a chipset, and they provide an SDK that 09:52:49
17 allows you to build applications on that chipset. 09:52:53

18 Q Are you aware of any example where an AMD customer 09:52:56
19 used the Strings functionality in the AMD SDK? 09:53:05

20 MR. HOSIE: I'm sorry, may I have that read back, 09:53:12
21 please. 09:53:14

22 (Record read.) 09:53:23

23 THE WITNESS: If, by "use," you mean did they 09:53:24
24 license the AMD SDK and license our SDK to develop a 09:53:28
25 solution, yes, there were any number of companies that 09:53:33

1 were looking at the Aul200 as a solution for Portal media 09:53:36
2 players, and they did use our SDK, and they consulted with 09:53:42
3 us for the best way to customize our interface and 09:53:45
4 application for their needs. 09:53:49

5 BY MR. McPHIE: 09:53:51

6 Q Are you aware of any companies that built a 09:53:51
7 product using the Strings functionality in the AMD 09:53:56
8 chipset? 09:54:01

9 A If, by "built," you mean did they take the AMD SDK 09:54:02
10 and our SDK and actually develop something internally, 09:54:07
11 yes, there were a few companies that did do that. If, "by 09:54:11
12 develop," you mean sell it on a store shelf, no. The 09:54:17
13 nature of our agreement with AMD was that customers could 09:54:22
14 use our SDK, but they had to enter into a separate license 09:54:24
15 agreement with us, if they ever shipped the product. No 09:54:27
16 products were shipped using the AMD SDK that included 09:54:31
17 Strings. 09:54:35

18 Q Did BeComm consult for Thomson Multimedia in the 09:54:40
19 2002-2006 time frame? 09:54:45

20 A The nature of our consulting with Thomson 09:54:47
21 Multimedia was similar to AMD, except Thomson was the 09:54:52
22 actual end manufacturer of the device. So they paid us to 09:54:55
23 port Portal to their home gateway solution, and that 09:54:59
24 required us to enable Portal on Linux and then also 09:55:06
25 develop protocols specific to the types of communication 09:55:11

1 that Thomson Multimedia required. It required us to 09:55:13
2 configure the system, and it also required us to build a 09:55:17
3 user interface that would allow an end user to consume all 09:55:23
4 the different services within the home from a TV that was 09:55:28
5 attached to the Thomson set-top box. And they paid us to 09:55:32
6 do that porting work, and we had an agreement with them 09:55:38
7 for follow-on sales of the box at the time that they would 09:55:41
8 actually end up selling it. 09:55:47

9 Q How much money did Implicit receive as a result of 09:55:48
10 its consultation for Thomson Multimedia? 09:55:54

11 A I don't remember the exact number, but it was 09:55:57
12 hundreds of thousands, in that range. 09:56:02

13 Q Was the set-top box, developed in conjunction with 09:56:05
14 Thomson, ever released to the public? 09:56:14

15 A No, that group, like all the other groups that we 09:56:17
16 were dealing with, had to cancel their divisions because 09:56:21
17 of the state of the economy, so their product was 09:56:25
18 basically shuttered well after we had completed our 09:56:29
19 portion of the development. 09:56:35

20 Q And are you aware of any correspondence or other 09:56:37
21 documents indicating that the reason the project was 09:56:44
22 canceled had to do with the state of the economy? 09:56:46

23 MR. HOSIE: Objection. Vague, ambiguous, 09:56:49
24 overbroad. 09:56:52

25 THE WITNESS: What I am aware of is the entire 09:56:54

1 division was canceled, as was the case with Intel, as was 09:56:56
2 the case with AMD. And the reason was that in each of 09:57:00
3 these cases, the CEOs of the companies had to cut any 09:57:04
4 division that was working on speculative consumer 09:57:11
5 electronics devices. And by "speculative," I mean devices 09:57:13
6 that did not yet have an established market. None of them 09:57:17
7 had the gumption to try to create a market for new 09:57:20
8 devices. 09:57:25
9 BY MR. McPHIE: 09:57:30
10 Q What was the nature of Implicit's consultation for 09:57:30
11 Phillips in the 2002-2006 time frame? 09:57:38
12 A Phillips commissioned us to port Portal to the 09:57:41
13 iPronto Tablet. They paid us for the porting services and 09:57:47
14 to develop a custom application on top of Portal that 09:57:54
15 allowed the iPronto device to consume music, movies, 09:57:59
16 control devices within the home, and to interact with 09:58:06
17 Portal running on one or more PCs in the home which would 09:58:12
18 essentially create an aggregated library of home media 09:58:16
19 that could be distributed throughout the home. 09:58:20
20 Q Did Implicit ultimately build a product in 09:58:37
21 connection with its work with Phillips? 09:58:41
22 A Did Implicit build a product? Yes. We delivered 09:58:45
23 a product to Phillips. 09:58:49
24 Q Was the product that Implicit provided to Phillips 09:58:51
25 ever released to market? 09:58:57

1 A We released it to Phillips, and that was our 09:59:00
2 market. So in that sense, yes. Just as we did with every 09:59:03
3 other customers, AMD, Intel and Thomson Multimedia. Our 09:59:07
4 job was to deliver to them a software package. Their job 09:59:12
5 was to combine that software with hardware, and then find 09:59:14
6 a customer, either an end user or a service provider such 09:59:17
7 as a cable company or a phone company. So Phillips did 09:59:21
8 not end up selling iProntos enabled with Portal, if that's 09:59:26
9 what you're asking. 09:59:31
10 Q So Phillips never released the Implicit-based 09:59:37
11 product to market; correct? 09:59:41
12 MR. HOSIE: Objection. Asked and answered. 09:59:42
13 THE WITNESS: As I said, Phillips did not release 09:59:44
14 an iPronto bundled with Portal to market. 09:59:46
15 BY MR. McPHIE: 09:59:51
16 Q Who was Implicit's main contact at Phillips? 09:59:51
17 A I don't remember. 09:59:58
18 Q Who was Implicit's main contact at Thomson 09:59:59
19 Multimedia? 10:00:04
20 A I believe his name was Greg Lukins. 10:00:04
21 Q Who was Implicit's main contact at AMD? 10:00:08
22 A Bob. That's all I remember. 10:00:26
23 Q Going back one page, under "January 2001 - 2002," 10:00:28
24 there's a statement "Intel consumer division to use Portal 10:00:36
25 (now called Strings) for all consumer devices." 10:00:40

1 Do you see that there? 10:00:46

2 A I do. 10:00:46

3 Q What are the "all consumer" devices you were 10:00:47

4 referring to there? 10:00:51

5 A The particular division at Intel that we were 10:00:52

6 working with found out about our work on the Intel Tablet, 10:00:55

7 and engaged us for what was to be Intel's push into the 10:01:00

8 home with Intel-branded consumer devices. This included 10:01:07

9 PCs that were running Strings, it included end devices 10:01:12

10 such as stereos running Strings and ultimately TVs that 10:01:17

11 would be running Strings, creating an integrated network 10:01:21

12 of media-rich appliances. 10:01:26

13 Q Were any of the Intel consumer devices you just 10:01:31

14 described actually built? 10:01:35

15 A We had several of the early versions of the 10:01:36

16 devices in our office as we were developing the solution 10:01:42

17 for Intel so they built them. They never shipped them 10:01:45

18 because this division, like the Tablet division, was 10:01:49

19 canceled by the CEO of Intel in 2001 due to the company 10:01:52

20 having a massive cutback in spending. Their stock 10:02:02

21 market -- their stock price had collapsed, as had many 10:02:06

22 other companies, and the September 11th impact 10:02:10

23 precipitated a lot of the cutbacks that we saw. So no, 10:02:17

24 they did not end up shipping a product using Strings. 10:02:21

25 Q And, in fact, Intel never shipped any consumer 10:02:26

1 device based on Strings; correct? 10:02:30

2 A Intel -- that division of Intel never shipped a 10:02:32

3 device, period. The entire division was canceled. 10:02:38

4 Q And so that's correct? 10:02:44

5 A No, it's not correct. Intel sells all kinds of 10:02:46

6 consumer devices, including, at the time, mice, keyboards, 10:02:50

7 networking equipment that had nothing to do with Strings. 10:02:53

8 Q And, in fact, Intel never shipped any consumer 10:02:56

9 device based on Strings; correct? 10:03:01

10 A That's correct. 10:03:04

11 Q Did -- well, withdrawn. 10:03:12

12 Was there any other investment made beyond the -- 10:03:15

13 let me withdraw that again. 10:03:24

14 Was there any other investment made to Implicit 10:03:25

15 beyond the \$10 million listed under "January 2001 - 2002"? 10:03:30

16 MR. HOSIE: May I have that read back, please. 10:03:36

17 (Record read.) 10:03:49

18 MR. HOSIE: Objection. Vague, ambiguous, "made 10:03:50

19 to." 10:03:53

20 THE WITNESS: The nature of my investment was 10:03:56

21 essentially a convertible note with the company. I would 10:03:58

22 lend the money to the company, and the company would 10:04:01

23 operate and pay its bills using the cash that I provided 10:04:04

24 it. There were no other investors as part of that 10 10:04:08

25 million. There were no other convertible notes, nor did 10:04:12

1 we sell stock to anybody. 10:04:15

2 BY MR. McPHIE: 10:04:17

3 Q And was there any other investment in Implicit 10:04:17

4 after 2002? 10:04:20

5 A I -- yes, there were. There was. 10:04:22

6 Q When was that? 10:04:26

7 A As I mentioned when we discussed this previously, 10:04:28

8 I believe in 2006, when I had renamed the company to Dig 10:04:34

9 Bee, and pursuing a completely different business model 10:04:40

10 with completely different code base, I raised some money 10:04:44

11 for that effort, which I subsequently paid back, but it 10:04:47

12 was unrelated to the development of Strings and Portal. I 10:04:50

13 believe that was 2006. 10:04:56

14 Q Was there any other investment in Implicit after 10:04:58

15 2002? 10:05:03

16 A No. 10:05:04

17 Q Why did BeComm change its name to Implicit 10:05:09

18 Networks? 10:05:13

19 A We were being sued by a company in Germany for 10:05:13

20 trademark infringement. 10:05:16

21 Q What was the outcome of that trademark 10:05:20

22 infringement suit? 10:05:22

23 A Actually, I misspoke. They did not file a suit. 10:05:23

24 They told us that they would if we did not change our 10:05:26

25 name. And our attorneys at the time advised us to change 10:05:31

1 our name. I never liked the name BeComm regardless, so it 10:05:34
2 was an easy decision. 10:05:39

3 Q What is meant by "Implicit" in the name Implicit 10:05:41
4 Networks? 10:05:49

5 MR. HOSIE: Excuse me. Objection. Lacks 10:05:49
6 foundation. 10:05:53

7 THE WITNESS: I think you're giving us more credit 10:05:53
8 than we deserve. Implicit Networks was a name that was 10:05:56
9 available. And it then became our name. It was vaguely 10:06:01
10 relevant, but it wasn't such a concerted effort to be 10:06:06
11 descriptive of what we do. 10:06:11

12 BY MR. McPHIE: 10:06:13

13 Q You don't ascribe any particular meaning to what 10:06:14
14 an implicit network is; is that right? 10:06:17

15 MR. HOSIE: Objection. Vague and ambiguous. 10:06:24

16 THE WITNESS: No more than what the word implies. 10:06:25
17 There is, today, some discussion about the concept of 10:06:28
18 implicit networks. Our name was unrelated to that. 10:06:30

19 BY MR. McPHIE: 10:06:35

20 Q To you, what does the name Implicit Networks 10:06:37
21 imply? 10:06:39

22 MR. HOSIE: Objection. Vague and ambiguous, lacks 10:06:40
23 foundation. 10:06:42

24 THE WITNESS: It implies the name of our company. 10:06:42
25 It doesn't imply anything more or less than that. It was 10:06:46

CONFIDENTIAL

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were duly sworn; that a record
8 of the proceedings was made by me using machine
9 shorthand which was thereafter transcribed under my
10 direction; further, that the foregoing is a true
11 record of the testimony given.

12 I further certify I am neither financially
13 interested in the action nor a relative or employee
14 of any attorney of party to this action.

15 IN WITNESS WHEREOF, I have this date
16 subscribed my name.

17
18 Dated: 6/13/12
19
20
21

LORI STOKES

CSR No. 12732
22
23
24
25

1 saying is that the sequence of components that is used to 12:00:13
2 create the data processing path is not arbitrary. The 12:00:17
3 components are in a logical order such that the output of 12:00:23
4 one is compatible with the input of the next one. 12:00:27
5 BY MR. McPHIE: 12:00:31
6 Q In your view, it is not enough to say everything 12:00:31
7 here is IP packets, we don't need to worry about format 12:00:35
8 matching? That is not enough to fall within the '163 12:00:42
9 patent claims; correct? 12:00:44
10 MR. HOSIE: Objection. Vague, ambiguous, 12:00:45
11 overbroad. 12:00:46
12 THE WITNESS: When an examiner makes a claim of 12:00:49
13 obviousness, there needs to be a reason for that -- that 12:00:51
14 system to have even been contemplated. 12:00:56
15 BY MR. McPHIE: 12:01:00
16 Q I'm asking for your view. Can you answer the 12:01:01
17 question? 12:01:03
18 MR. HOSIE: Could I have the question read back, 12:01:03
19 please. 12:01:05
20 (Record read.) 12:01:19
21 MR. HOSIE: Same objections. 12:01:19
22 THE WITNESS: If you're building a system that has 12:01:21
23 no formats, there is no reason to contemplate any kind of 12:01:23
24 format compatibility. You don't even think of it that 12:01:29
25 way. It's not within the problem space. 12:01:33

1	BY MR. McPHIE:	12:01:35
2	Q And so the answer to my question is yes?	12:01:36
3	MR. HOSIE: Objection. Vague, ambiguous,	12:01:38
4	mischaracterizes the testimony.	12:01:40
5	THE WITNESS: No, the answer to your question is	12:01:43
6	there is no answer because your question was illogical and	12:01:45
7	lacked any foundation. You're presuming that somebody who	12:01:49
8	is building a system that has no formats would make the	12:01:52
9	extrapolation to think there's no formats, so I don't have	12:01:55
10	to worry about the order. That's not the way you would	12:01:59
11	think about the problem.	12:02:02
12	BY MR. McPHIE:	12:02:03
13	Q If there's a system that only handles IP packets,	12:02:03
14	it doesn't fall within the '163 patent claims; correct?	12:02:07
15	MR. HOSIE: Objection. Vague, ambiguous,	12:02:10
16	overbroad.	12:02:13
17	THE WITNESS: No, that's not correct. If you	12:02:14
18	build a system that handles IP packets that looks at the	12:02:16
19	first packet of a message and identifies information in	12:02:20
20	that packet, that it uses to look up a series of	12:02:23
21	components in a mapping database that is then used to	12:02:26
22	create -- dynamically create a data processing path to	12:02:30
23	process packets of that message, then that does fall	12:02:34
24	within the scope of our patents. You could build a system	12:02:38
25	identical to Kerr in functionality and identical to	12:02:41

1	Decasper in functionality using '163.	12:02:45
2	BY MR. McPHIE:	12:02:49
3	Q Okay.	12:02:49
4	MR. HOSIE: All right.	12:02:50
5	MR. McPHIE: Let's break for lunch.	12:02:50
6	MR. HOSIE: Thank you.	12:02:52
7	THE VIDEOGRAPHER: This ends Media No. 2, Volume	12:02:52
8	III, of the 30(b)(6) for Implicit Networks. Off the	12:02:55
9	record at 12:02 p.m.	12:03:00
10	(Lunch recess.)	13:11:30
11	THE VIDEOGRAPHER: Back on the record at 1:11 p.m.	13:11:33
12	This is the beginning of Media No. 3, Volume III, of the	13:11:47
13	30(b)(6) for Implicit Networks.	13:11:50
14	BY MR. McPHIE:	13:11:55
15	Q Could you turn to page 28 of Exhibit 133. You'll	13:11:55
16	see there's a statement about the '857 reexamination	13:12:14
17	proceedings, where an office action indicated that Kerr	13:12:18
18	did not have particular disclosure of particular elements.	13:12:25
19	MR. HOSIE: Where on the page, sir?	13:12:30
20	MR. McPHIE: Middle of the page.	13:12:31
21	MR. HOSIE: Middle of the page.	13:12:32
22	BY MR. McPHIE:	13:12:33
23	Q You see that there?	13:12:34
24	A Are you referring to the section that says, "Kerr	13:12:34
25	does not explicitly teach any identification of a sequence	13:12:36

1 of components as part of its proper treatment of a message 13:12:40
2 flow"? 13:12:42

3 Q That area, do you see that there? 13:12:42

4 A I do. 13:12:44

5 Q Your response nowhere mentions that the '857 13:12:44
6 examiner, in fact, found that these elements were 13:12:50
7 disclosed in the Pfeifer references -- the Pfeifer 13:12:54
8 reference; correct? 13:12:57

9 MR. HOSIE: May I have that read back, please. 13:12:58

10 BY MR. McPHIE: 13:13:00

11 Q Let me restate it. Your response nowhere mentions 13:13:00
12 that the '857 patent examiner, in fact, found that these 13:13:03
13 elements were disclosed in the Pfeifer reference -- 13:13:07

14 MR. HOSIE: Objection. 13:13:10

15 BY MR. McPHIE: 13:13:11

16 Q -- correct? 13:13:11

17 MR. HOSIE: Vague, ambiguous, overbroad. 13:13:11

18 THE WITNESS: If you're asking if we reference the 13:13:20
19 Pfeifer reference in this response, we did not. 13:13:22

20 BY MR. McPHIE: 13:13:27

21 Q And in fact, Pfeifer does dynamically identify a 13:13:27
22 sequence of components; correct? 13:13:31

23 MR. HOSIE: Objection. Vague and ambiguous. 13:13:33

24 THE WITNESS: If, by "dynamically identify," you 13:13:35
25 mean receive a first packet, look at information in that 13:13:38

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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IMPLICIT NETWORKS, INC.,

Plaintiff,

vs.

Case No.:

3:10-cv-4234 SI

JUNIPER NETWORKS, INC.,

Defendant.

/

VIDEOTAPED 30(b)(6) DEPOSITION OF
EDWARD BALASSANIAN
VOLUME 5

Thursday, August 16, 2012

REPORTED BY: RACHEL FERRIER, CSR 6948

(1-445620)

EDWARD BALASSANIAN - 8/16/2012

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1 Q There's no partial credit in patent
2 infringement law; correct?

3 A Correct.

4 Q Is it your understanding that the -- that
5 infringement of the claims of the '163 patent can be
6 demonstrated at a good-faith level based on publicly
7 available information?

10:01:12

8 MR. HOSIE: Can I have that read back, please.

9 MR. McPHIE: Let me -- let me rephrase it.

10 Q It -- it is your understanding that Implicit
11 could form a good-faith belief regarding infringement of
12 the '163 patent based entirely on publicly available
13 information; correct?

10:01:32

14 A It depends on what product we are talking
15 about. Whose product and what publicly available
16 information?

10:01:52

17 Q It is your understanding that Implicit could
18 form a good-faith belief regarding Juniper's alleged
19 infringement of the '163 patent based entirely on
20 publicly available information; correct?

10:02:04

21 A Yes.

22 Q And the reason I ask is sometimes you have
23 patents on things like complicated pharmaceuticals or
24 other very detailed technologies that one cannot
25 determine from the outside.

10:02:21

1 You are aware of that?

2 A Okay.

3 Q But your -- your view is that this case is not
4 one of those cases?

5 MR. HOSIE: Objection; vague, ambiguous,
6 overbroad.

7 THE WITNESS: We did not patent a
8 pharmaceutical technology or chemical, so, yes, I would
9 agree with you on that.

10 MR. McPHIE: Very good, but maybe in the
11 future. You never know, right? No, that really wasn't
12 my question.

13 Q Your view is that the '163 patent is not of the
14 type that requires -- in order to have a good-faith
15 belief of infringement, that requires a digging down
16 into details of software code that are not available to
17 the public; correct?

18 A No. On the contrary, I would say it's more
19 that Juniper's product, because of the fact that it
20 relies on some fundamental concept, such as being
21 message-based, stateful, flow-oriented; that those are
22 earmarks of infringement that are, in our view,
23 impossible to build around. So it's less to do with our
24 patents, more to do with the nature of Juniper's
25 product.

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1 The mapping of its features and claim
2 functionality map directly to '163, and we don't think
3 there is any other way to build that kind of product
4 than '163.

5 Q So if I tell you that Company X has a stateful,
6 flow-based firewall, have I told you everything you need
7 to know to have a good-faith belief that Company X
8 infringes the '163 patent?

10:03:47

9 A No.

10 Q What else would you need to know?

10:04:06

11 A Well, it's laid out in this claim here. I
12 mean, all the elements of our claim are very clearly
13 detailed.

14 Q So the fact that a company has a state- -- a --
15 let me withdraw that.

10:04:18

16 So the fact that a company makes and sells a
17 stateful, flow-based firewall does not, in and of
18 itself, demonstrate infringement of the '163 patent;
19 correct?

20 MR. HOSIE: Objection; vague, ambiguous.

10:04:32

21 THE WITNESS: We have talked about flows
22 before. TCP/IP sessions are a flow. So if you have a
23 firewall that proxies TCP connections, that's a
24 stateful, flow-based firewall, and that is not an
25 infringing firewall.

10:04:49

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1 In our case, the elements that you need to
2 be in- -- that would need to be there for us to have a
3 good-faith belief that you are infringing are laid out
4 in claim 1, and I can read it to you again if you want.
5 I think you probably --

10:05:04

6 MR. McPHIE: No, we don't need to do that.

7 THE WITNESS: -- recoil if I did that.

8 MR. McPHIE: We don't need to do that.

9 Q Is it fair to say that performing TCP
10 session-based communications is flow-based?

10:05:16

11 MR. HOSIE: Objection; vague, ambiguous,
12 overbroad.

13 THE WITNESS: One way to -- another word for a
14 "session" is a "flow," but flows can be more than TCP
15 sessions, so it's not 100 percent interchangeable.

10:05:35

16 BY MR. McPHIE:

17 Q If I have a product that handles TCP sessions,
18 is it flow-based, under your understanding of that term?

19 MR. HOSIE: Same objections.

20 THE WITNESS: I wouldn't call the product
21 flow-based. I would say that TCP -- as a protocol, by
22 its nature, each session is essentially a flow.

10:05:51

23 BY MR. McPHIE:

24 Q So the TCP protocol is flow-based; correct?

25 A It's not flow-based. Sessions are synonymous

10:06:10

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1 firewall that practices the claims of the '163 patent;
2 correct?

3 A Sure. Yes.

4 Q And you could also have a stateful, flow-based
5 firewall that does not practice the claims of the '163
6 patent; correct?

10:08:57

7 A Correct.

8 Q One of the elements of claim 1 of the '163
9 patent, as issued in the reexamination, is: Such that
10 the output format of the components of the
11 non-predefined sequence match the input format of the
12 next component.

10:09:28

13 Are you familiar with that element of the
14 claim?

15 A Yes.

10:09:40

16 Q What did Implicit do to satisfy itself, prior
17 to suing Juniper, that Juniper, in fact, practiced that
18 element?

19 MR. HOSIE: Before you answer that question,
20 let me caution the witness not to disclose the substance
21 of communication with counsel or consultants working for
22 counsel.

10:10:01

23 THE WITNESS: So in reaching our good-faith
24 belief that Juniper, in fact, fringes, the process
25 included me looking at publicly available documentation,

10:10:25

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1 of which there is a copious amount on Juniper's website
2 and books from O'Reilly Media that talk about Juniper's
3 Junos Operating System quite elaborately. At that
4 point, our attorneys have -- and I have to be careful
5 not to talk about our work product, but we hire experts 10:10:50
6 to dig into it further and substantiate that every
7 element of these claims is being infringed before we
8 file a complaint. I'm not involved in every aspect of
9 that effort.

10 MR. McPHIE: Thank you. 10:11:13

11 Q Did you review claim charts for Juniper
12 products prior to authorizing a lawsuit against Juniper?

13 A I don't know if we made a formal claim chart.
14 I don't know if the claim chart that we eventually gave
15 Juniper was created before or after the complaint, so 10:11:43
16 I'm not sure I can answer that question.

17 Q Sitting here today as the corporate
18 representative of Implicit, can you tell me whether
19 Implicit made a claim chart regarding alleged
20 infringement by Juniper prior to filing suit against 10:12:02
21 Juniper?

22 MR. HOSIE: And if I may, you are asking if
23 Implicit the company did as against its agents,
24 attorneys, or consultants?

25 MR. McPHIE: I'm including -- 10:12:13

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1 MR. HOSIE: Okay.

2 MR. McPHIE: -- everyone.

3 MR. HOSIE: So the question is inclusive.

4 Implicit or anyone working on Implicit's behalf prepare
5 a claim chart prior to filing, if you know.

10:12:20

6 THE WITNESS: So I and the Implicit staff did
7 not create a claim chart, but as far as I understand,
8 our firm, Hosie Rice, our law firm, would have created a
9 claim chart, and that was provided to Juniper sometime
10 after the complaint.

10:12:38

11 BY MR. McPHIE:

12 Q Okay. And -- and without getting into the
13 details, your testimony is that attorneys or others
14 working on behalf of Implicit created a claim chart for
15 Juniper products prior to filing the lawsuit?

10:12:57

16 MR. HOSIE: Objection; mischaracterizes the
17 testimony, lacks foundation.

18 THE WITNESS: So we certainly map every element
19 of the claim to Juniper functionality to give ourselves
20 the confidence that every element of the claim was, in
21 fact, being infringed.

10:13:12

22 The creation of a formal claim chart, I don't
23 know when that happened in the time line, but the
24 understanding that every element of the claim was being
25 infringed, I am certain I had confidence in, and I'm

10:13:27

1 A I do think it's relevant whether a product is
2 configurable or not, yes.

3 Q And, specifically, whether it's configurable at
4 runtime; right?

5 A If you can change the policies at runtime, I 10:49:36
6 think that's significant, yes, and by that, if you mean
7 configurable, then, yes, I would agree.

8 Q You understand that the Court, in her Claim
9 Construction Order, declined Implicit's proposal to
10 construe the claims to incorporate changeable at 10:50:05
11 runtime; correct?

12 MR. HOSIE: Objection; calls for legal opinion,
13 mischaracterizes the order.

14 THE WITNESS: I have to look at it. My
15 recollection was that she gave us actually a better 10:50:20
16 definition than what we had, but I'm happy to look at it
17 and see what she said.

18 BY MR. McPHIE:

19 Q Well, on page 5, Implicit's proposed
20 construction was: Sequence of components, changeable 10:50:32
21 runtime, is what it says here. Although, I believe it
22 was changeable at runtime; is that right?

23 A I'm sorry. I was reading. Can you repeat what
24 you --

25 Q In the Court's Claim Construction Order, 10:50:49

1 there's a table on page 5 that says that Implicit's
2 proposed construction was sequence of components
3 changeable runtime -- I think there's just a word left
4 out there. It was changeable at runtime; correct?

5 A That's right.

10:51:03

6 Q Okay. And then you go on on page 6 -- you
7 don't have to read it out loud, but if you just look at
8 lines 11 through 19, you see that the Court declined to
9 adopt that proposed construction; correct?

10 A Are you talking about line 20 and 21?

10:51:25

11 Q I'm sorry. Lines 11 through 19.

12 A Oh, sorry. So what's your question about those
13 lines?

14 Q That the Court declined to construe the claims
15 so as to incorporate the concept of changeable at
16 runtime; correct?

10:51:50

17 A Not the concept. She says that it's not
18 helpful because it would -- actually, the jury wouldn't
19 understand what "changeable at runtime" means. She
20 didn't decline the concept, she just said that those --
21 those terms are -- are not going to help a jury.

10:52:04

22 Q Is it your understanding that the claims, as
23 construed by the Court, include the concept of
24 changeable at runtime?

25 A Well, she defined that as: A sequence of

10:52:20

1 software routines that was not identified before the
2 first packet of a message was received. That, to me,
3 implies changeable at runtime.

4 Q After Implicit received the Court's Claim
5 Construction Order, did it perform any analysis or
6 investigation to determine whether it could still, in
7 good faith, maintain claims of infringement by Juniper?

10:52:40

8 A I actually think we high-fived when we got this
9 Claim Construction Order, because it feels broader to me
10 than what we said, so I don't think we needed to do any
11 more in-depth analysis. This gave us more flexibility
12 in mapping our claims to Juniper's products.

10:53:02

13 Q And so after Implicit received the Court's
14 Claim Construction Order, it did not perform any
15 analysis or investigation to determine whether it could
16 still, in good faith, maintain claims of infringement by
17 Juniper; correct?

10:53:19

18 MR. HOSIE: Objection; mischaracterizes the
19 testimony, lacks foundation.

20 THE WITNESS: So at this point in time, we had
21 experts who were deeply steeped in Juniper product
22 literature. I don't know if discovery of source code
23 had happened yet or not, but there was an ongoing
24 persistent and constant analysis of infringement with
25 increasing -- daily increasing specificity in terms of

10:53:35

10:53:54

1 the -- in terms of the actual infringement.

2 BY MR. McPHIE:

3 Q Did you, as the CEO of Implicit, instigate any
4 sort of reappraisal of your claims against Juniper in
5 light of the Court's Claim Construction? 10:54:14

6 MR. HOSIE: Objection; asked and answered.

7 THE WITNESS: As a matter of process, we're --
8 we have and continue to and, at this time, before and
9 after the Claim Construction Order, been very rigorous
10 about mapping our elements to all the information that 10:54:32
11 we receive from Juniper about their products. The more
12 we receive, the more scrutiny we give it.

13 MR. McPHIE: And I understand there is this
14 ongoing process that -- in connection with the
15 litigation. 10:54:48

16 Q I'm asking whether you, as CEO of Implicit,
17 instigated any sort of specific appraisal of your claims
18 against Juniper in light of the Court's Claim
19 Construction?

20 MR. HOSIE: Objection; asked and answered. 10:55:01

21 THE WITNESS: We, of course, took the Claim
22 Construction Order of the Court and made an assessment
23 about where that positioned us relative to where we were
24 before the Claim Construction Order.

25 MR. HOSIE: I -- let me interject and caution 10:55:16

1 sentence which begins: In 2003, BeComm was renamed and
2 relaunched as Implicit Networks in transition from
3 developing operating systems to addressing a rapidly
4 developing gap in the industry for content management.

5 Do you see that there?

15:04:21

6 A I do.

7 Q Is that an accurate statement?

8 A It's an accurate reading of what it says here,
9 but I don't think it's entirely accurate in terms of
10 what we were doing. We were trying to reposition the
11 company at this time to be content-management-focused,
12 so we, as you do in any marketing document, try to
13 posture, but I don't think it's an accurate reflection
14 of what we were actually working on at the time.

15:04:32

15 Q When did Implicit essentially stop developing
16 operating systems?

15:04:52

17 A We worked on it all the way up until 2006. We
18 didn't give up until then.

19 Q But by 2007, Implicit was no longer working on
20 developing operating systems; is that fair?

15:05:15

21 A Not in -- not -- we weren't working on the
22 operating system that we had created, Portal or Strings.
23 We essentially gave up.

24 Q And that happened in roughly 2007?

25 A It coincided with us deciding to -- yes. We

15:05:27

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1 essentially stopped development operations.

2 Q And what was it that led to that change in
3 strategy?

4 A We ran out of money. I ran out of employees.

5 Q Okay. And then -- it goes on, on page 11, to 15:05:45
6 discuss Implicit's patent portfolio, and if you look at
7 the second paragraph, it begins by saying, Having spent
8 significant time and money in the development of these
9 technologies, it is Implicit's intention to protect its
10 intellectual property rights and to support its ongoing 15:06:11
11 business through the strategic licensing of its patent
12 portfolio.

13 Do you see that there?

14 A I do.

15 Q Is that an accurate statement? 15:06:22

16 A It was our intention and we started to become
17 much more sensitive to intellectual property when we
18 started to realize that the industry was, essentially,
19 having a carte blanche access to our intellectual
20 property and building very profitable products based on 15:06:40
21 our efforts over the years.

22 Q So was it -- was it in 2007 that Implicit's
23 focus shifted to protecting its intellectual property
24 portfolio and monetizing its patents?

25 A I would say it was more a realization that we 15:06:59

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1 could not compete without doing it and that, at that
2 point, enough was enough. We always felt like we could
3 outpace the competitors by just building better
4 products, but when our intellectual property is not
5 respected, then it becomes extremely difficult to
6 compete, especially when you are undercapitalized.

15:07:18

7 Q And it was in 2007, roughly, that you made that
8 transition from technical development of operating
9 systems to more focused on intellectual property
10 enforcement and monetization; is that fair?

15:07:38

11 A I would say the transition was more one from
12 having money than not having money. So, at that point,
13 without developers, the only thing that you have got
14 left is your intellectual property. So we ran out of
15 runway, and we had already come to realize that the
16 industry was in- -- infringing on our technology, so the
17 logical business decision was to protect our
18 intellectual property and recoup our investments in
19 our -- in our efforts.

15:07:52

20 Q And -- and just as a matter of objective fact,
21 that, in fact, has been the focus of Implicit since
22 roughly 2007, enforcement of its patent portfolio and
23 intellectual property rights; correct?

15:08:11

24 A We have had a lot of -- we have focused on
25 that, not entirely. We've repeatedly talked about

15:08:34

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1 bringing our technology back to market, especially the
2 networking stuff, because we continue to believe our
3 code is beyond what's out there in terms of
4 sophistication, but we haven't -- we haven't pursued it.
5 It's a massive undertaking.

15:08:54

6 Q So for now, part of the focus is on monetizing
7 the patent portfolio and potentially using that -- that
8 capital to then pursue development in the future?

9 A No. It's not -- we are not focused on
10 monetizing the patent portfolio. We are protect -- we
11 are focused on protecting it and defending it, and not
12 only establishing, but exercising all the rights that we
13 were afforded by the entire patent process and the law
14 around it. That -- that's the focus.

15:09:14

15 Q Okay. So -- so the focus for Implicit on
16 protecting its patent portfolio and defending it has,
17 essentially, been in place since about 2007; is that
18 fair?

15:09:35

19 MR. HOSIE: Objection; vague and ambiguous,
20 overbroad and lacks foundation.

15:09:49

21 THE WITNESS: We -- in 2007, we -- we became
22 much more deliberate in that effort. In the past, we
23 had talked about it, as you have seen in various
24 correspondence that you have shown me, but it wasn't
25 until 2007 that we actually engaged a firm to help us

15:10:08

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1 with that.

2 BY MR. McPHIE:

3 Q Okay. So there was some run-up to that
4 transition, but 2007 is when it finally executed.

5 A That's when we hired Goldstein, Faucett &
6 Prebeg.

15:10:25

7 Q To pursue patent infringement claims?

8 A Yes.

9 Q Okay. Are you familiar with -- withdrawn.

10 You are aware that the accused products in this
11 case, the accused Juniper products, include,
12 essentially, the J Series and SRX Series; correct?

15:11:10

13 A I would have to look at the latest complaint to
14 see what the final list was. I know there's been some
15 back and forth on that, but I know it does include the
16 SRX for sure and some subset of the J Series Routers and
17 potentially the WAN optimization products.

15:11:31

18 Q So if you go to Exhibit 105, this is the First
19 Amended Complaint.

20 A 105?

15:11:52

21 Q Mm-hmm.

22 A Do I have 105?

23 MR. HOSIE: Yeah. It's previously marked.

24 It's the First Amended Complaint. He had you look at
25 paragraph 22.

15:12:01

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1 THE WITNESS: Oh, right.

2 BY MR. McPHIE:

3 Q And if you turn to paragraph 35 and there you
4 see a listing of Juniper products; correct?

5 A Correct.

15:12:24

6 Q And the J Series Services Routers are listed
7 there; correct?

8 A Yes.

9 Q As well as the SRX Series Services Gateways?

10 A Right.

15:12:32

11 Q And there are a number of other products listed
12 there as well?

13 A Mm-hmm.

14 Q And you understand that those other products
15 have now been dropped from this case; correct?

15:12:41

16 MR. HOSIE: Objection; lacks foundation.

17 THE WITNESS: I -- I'm not sure, when you say
18 "those other products," which ones you mean. I would
19 have to see what the final list is to know what products
20 have been dropped and not dropped. I know the
21 SRX Series Gateways are definitely in there.

15:12:58

22 BY MR. McPHIE:

23 Q When we have talked about the prefiling
24 investigation that Implicit did before suing Juniper,
25 the prefiling investigation encompassed each and every

15:13:26

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CERTIFICATE OF REPORTER

I, RACHEL FERRIER, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony was thereafter reduced to typewriting by computer under my direction and supervision and is a true record of the testimony given by the witness;

That before completion of the deposition, review of the transcript [X] was [] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED:

RACHEL FERRIER, CSR No. 6948

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**HIGHLY CONFIDENTIAL-- ATTORNEYS' EYES ONLY
TO BE FILED UNDER SEAL
SUBJECT TO PROTECTIVE ORDER**

IMPLICIT NETWORKS, INC.

Plaintiff,

v.

JUNIPER NETWORKS, INC.

Defendant.

No. C10-4234 SI

AMENDED EXPERT REPORT OF JEFFREY LEITZINGER, PH.D.

Econ ONE Research, Inc.

September 10, 2012

witnesses. We hadn't done any review of their source code. We had no confidence about their products and the degree to which they infringed. I shouldn't say we had no confidence. We didn't have their source code to give us that additional confidence like we do with Juniper and F5, so by definition there are many different factors now at play than there were then."⁸⁴

c. Implicit's licenses were not directly tied to commercially successful products

35. For the most part, the licensees in these prior licenses had yet to introduce commercially successful implementations of the patented technology. In some cases, the products contemplated by the licensee were hardly beyond the idea stage. Examples in this regard include the Intel license described above, Sun,⁸⁵ AMD,⁸⁶ RealNetworks,⁸⁷ and nVIDIA.⁸⁸

36. The adjudicated proceeding involving Microsoft is another example:

Even in our Microsoft case, we asserted our '163 patent against them and our '685 patent against them. They do not charge for the specific functionality of their asp.net modules. And for '163, it's hard to figure out whether they charge or not because they're selling a Windows server, and very few people ever buy a Windows server to just make it a firewall. So the degree to which we could associate revenue with those specific patents that we accused them for is nowhere near as clear as it would be, for example, for an F5 or a Juniper which derive a majority

⁸⁴ Balassanian Deposition, Volume II at 378:18 - 379:3.

⁸⁵ Balassanian Deposition, Volume II at 388:16-18

⁸⁶ "A. AMD does not make any money off the products that we accused." Balassanian Deposition, Volume II at 494:18-19. "I believe it was a media framework[...] a software package that AMD made freely available on their website for anybody to download without having to buy a chip." Balassanian Deposition, Volume II at 532:25-533:3.

⁸⁷ Balassanian Deposition, Volume II at 534:8-9.

⁸⁸ Balassanian Deposition, Volume II at 388:5-7

57. This history shows the patented technology to have been valuable to many of the leading technology companies involved with networks and network communication. It also reveals potential interest in the technology from the perspective of a number of product implementations including smart phones and computer tablets as well as network gateways. By the same token, Implicit was not successful in launching (or partnering with others to launch) a commercial implementation of these patents. As a result, this factor plays a neutral role with respect to assessing where within the range of industry licensing results a royalty for these patents should fall.

6. *Implicit has licensed its technology broadly*

[GP #3: The nature and scope of the license, such as whether it is exclusive or nonexclusive, restricted or non-restricted in terms of territory or customers]

[GP #4: The patentee's policy of maintaining its patent monopoly by licensing the use of the invention only under special conditions designed to preserve the monopoly]

58. As noted above, Implicit entered into 20 license agreements, mostly through settlement of its patent litigation. These agreements were non-exclusive and include a number of F5's competitors. Accordingly, F5's use of Implicit's technology was not exclusive, nor did it undermine a monopoly that Implicit maintained over the use of that technology. Median royalty rates in RoyaltyStat's non-exclusive licenses were lower by 1 percentage point than median rates for exclusive licenses. LESI found that exclusive deals, on average, carried a royalty rate premium of 2.2 percentage points relative to non-exclusive deals. Accordingly, these factors would support a lower rate within the customary range.

7. *Implicit does not compete with Juniper*

[GP Factor #5: The commercial relationship between the licensor and licensee, such as whether they are competitors in the same territory in the same line of business or whether they are inventor and promoter]

59. When the licensor competes with the licensee, one expects, everything else the same, to see higher royalty rates. The added royalties compensate the licensor not just for use of the technology but also the risk and potential costs of a more effective

88. Taking 59 percent of revenue for the Accused Products in the J Series and branch SRX Series, I obtain a royalty base for these products of \$35.8 million. Together with the royalty base for the high-end SRX Series, the total royalty base is \$195.6 million. To arrive at the total dollar amount of reasonable royalty, I apply the five percent royalty rate to this royalty base. That yields reasonable royalty damages of \$9.8 million.



Jeffrey Leitzinger, Ph.D.
September 10, 2012

EXHIBIT 4

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11
12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 IMPLICIT NETWORKS, INC.,

16 Plaintiff,

17 v.

18 JUNIPER NETWORKS, INC.,

19 Defendant.
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23
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Case No. C 10-4234 SI

**IMPLICIT NETWORKS, INC.'S
SECOND SUPPLEMENTAL
RESPONSES TO JUNIPER NETWORK,
INC.'S FIRST SET OF
INTERROGATORIES (NOS. 1-10)**

multiple paths through selecting individual components, each with a state associated with a path. IMP120724-725 reflects the inventor's notes regarding the connection of a path and its session with a component. IMP120732-736 reflects the inventor's notes regarding building connected paths.. IMP120765 reflects the inventor's notes regarding how the mapping system of the claimed invention is initialized, including via initialization files. IMP120779-785 reflects the inventor's notes regarding the relationship between addresses, bindings, and demux.

Interrogatory No. 3:

Identify all efforts to license, enforce, or investigate possible infringement of the patents-in-suit (including any pre-filing investigation regarding infringement alleged in this case), including the dates of such efforts, the persons and entities involved, equipment, materials, settings, and methods used, all testing results (regardless of whether they support a claim of infringement), the dates you first became aware of each instance of supposed infringement, and the complete set of facts considered in any evaluation or conclusion of supposed infringement.

Response:

Implicit refers to and incorporates by reference each of the foregoing General Objections. In addition to the foregoing General Objections, Plaintiff specifically objects to this interrogatory on the grounds that it is overly broad and unduly burdensome in requesting information with "the complete set of facts." Plaintiff further objects to this interrogatory on the ground that it seeks information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or protective doctrine. Plaintiff objects to this interrogatory as containing multiple discrete subparts in violation of Fed.R.Civ.P. 33(a), and reserves the right to treat this interrogatory as counting as no fewer than two separate

interrogatories – one concerning licensing efforts, and another concerning investigations of infringement.

Subject to and without waiving these objections, Implicit responds further as follows:

Entity	Patents-in-suit infringed	Where infringement asserted	Date of first knowledge of infringement
AMD	'163	<i>Implicit Networks Inc. v. Advanced Micro Devices Inc. et al</i> , 2-08-cv-00184, WAWD	At least by 2/4/2008
Cisco	'163, '857	<i>Implicit Networks, Inc. v. Cisco Systems, Inc.</i> 5-10-cv-03606, CAND	At least by 7/12/2010
Citrix	'163, '857	<i>Implicit Networks, Inc. v. Citrix Systems, Inc.</i> 3-10-cv-03766, CAND	At least by 8/24/2010
F5 Networks	'163, '857	<i>Implicit Networks, Inc. v. F5 Networks, Inc.</i> 3-10-cv-03365, CAND	At least by 11/2008
Hewlett-Packard	'163, '857	<i>Implicit Networks, Inc. v. Hewlett-Packard Company</i> 3-10-cv-03746, CAND	At least by 8/23/2010
Juniper Networks	'163, '857	<i>Implicit Networks, Inc. v. Juniper Networks, Inc.</i> 3-10-cv-04234, CAND	At least by 9/16/2010
Microsoft	'163	<i>Implicit Networks, Inc. v. Microsoft Corporation</i> 3-09-cv-05628, CAND	At least by 8/17/2009
Nvidia	'163	<i>Implicit Networks Inc. v. Advanced Micro Devices Inc. et al</i> , 2-08-cv-00184, WAWD	At least by 2/4/2008
Raza Microelectronics	'163	<i>Implicit Networks Inc. v. Advanced Micro Devices Inc. et al</i> , 2-08-cv-00184, WAWD	At least by 2/4/2008
RealNetworks	'163	<i>Implicit Networks Inc. v. Advanced Micro Devices Inc. et al</i> , 2-08-cv-00184, WAWD	At least by 2/4/2008
Sun Microsystems	'163	<i>Implicit Networks Inc. v. Advanced Micro Devices Inc. et al</i> , 2-08-cv-00184, WAWD	At least by 2/4/2008

1 Attorneys from the law firm of Goldstein, Faucett & Prebeg, L.L.P., participated in the pre-
2 filing investigation of infringement in connection with *Implicit Networks Inc. v. Advanced*
3 *Micro Devices Inc. et al*, 2-08-cv-00184. For all subsequent matters, attorneys from the law
4 firm of Hosie Rice L.L.P, participated in the pre-filing investigation of infringement, using
5 publicly available materials, with assistance from Edward Balassanian, Scott Bradley, David
6 Bernstein, Jason Smith, and Virendra Shekhawat. The specific analyses and their results are
7 subject to the attorney-client privilege and attorney work product protections.
8

9 In further answer to this interrogatory, plaintiff will produce documents pursuant to
10 F.R.Civ.P. 33(d).

11 **FIRST SUPPLEMENTAL RESPONSE (11/3/11):**

12 Implicit refers to and incorporates by reference each of the foregoing General
13 Objections. Subject to and without waiving these objections, Implicit responds further as
14 follows:

15 Implicit further responds pursuant to Fed R. Civ. P. 33(d), designating the following
16 documents: IMP095022 – IMP095034, IMP104256 – IMP104275, IMP094960 –
17 IMP094980, IMP094832 – IMP094842, IMP094981 – IMP094999, IMP094857 –
18 IMP0094865, IMP094881 – IMP094910, IMP094866 – IMP094880.
19

20 **Interrogatory No. 4:**

21 For all actual or potential prior art relating to the patents-in-suit, identify when you,
22 Becomm and Balassanian first became aware of each such actual or potential prior art,
23 whether each such actual or potential prior art was disclosed to the United States Patent and
24 Trademark Office (“PTO”) in connection with prosecution proceedings for each of the
25 patents-in-suit, and (if not) the basis for the non-disclosure.
26

27 **Response:**

1 Subject to and without waiving these objections, Implicit responds further as follows:

2 Implicit believes no such documents or information have been lost or destroyed since the first
3 anticipation of litigation involving the patents-in-suit.

4 Dated: April 13, 2012

Respectfully submitted,

6
7 /s/ William P. Nelson

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11 HOSIE RICE LLP

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13 600 Montgomery Street

San Francisco, CA 94111

14 (415) 247-6000 Tel.

15 (415) 247-6001 Fax

16 *Attorneys for Plaintiff*

IMPLICIT NETWORKS, INC.

CERTIFICATE OF SERVICE

I, Jerry Shaw, am a citizen of the United States and am employed in the County of San Francisco, State of California. I am over the age of 18 years and am not a party to the within action. My business address is Hosie Rice LLP, Transamerica Pyramid, 34th Floor, 600 Montgomery Street, San Francisco, California, 94111.

On April 13, 2012, I served the following attached

**IMPLICIT NETWORKS, INC.'S SECOND SUPPLEMENTAL RESPONSES TO
JUNIPER NETWORK, INC'S FIRST SET OF INTERROGATORIES (NOS. 1-10)**

via electronic mail and U.S. Mail at San Francisco, California, addressed to the following parties:

DAVID C. MCPHIE
dmcphe@irell.com
REBECCA L. CLIFFORD
rclifford@irell.com
Irell & Manella LLP
840 Newport Center Drive, Suite 400
Newport Beach, CA 92660-6324

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1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067-4276

*Attorneys for Defendant
Juniper Networks, Inc.*

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: April 13, 2012

/s/ Jerry Shaw
Jerry Shaw

EXHIBIT 5

[TO BE FILED UNDER SEAL]

EXHIBIT 6

Implicit's Pre-Filing Investigation Privilege Log

DOCID	Sent Date	From	To	CC	Subject	Privilege Claim
1	5/10/2010	Bruce Wecker (Hosie Rice)	Lynne Rose (Hosie Rice); Spencer Hosie		E-mail attaching iRunway claim chart - US Patent '163 Vs. WFP (2)	Attorney-Client and Work Product
2	5/10/2010	Bruce Wecker	Lynne Rose; Spencer Hosie		E-mail attaching iRunway claim chart - US Patent '163 Vs. WFP	Attorney-Client and Work Product
3	5/10/2010	Spencer Hosie	Lynne Rose		E-mail chain, including Virendra Shekhawat (iRunway), attaching iRunway claim chart - US Patent '163 Vs. WFP(2)	Attorney-Client and Work Product
				Spencer Hosie; Virendra Shekhawat (iRunway consultant and witness in Microsoft Judge Infante mini-trial)		
4	6/5/2010	Edward Balassanian	Bruce Wecker		E-mail discussing PDF regarding multi layered firewall	Attorney-Client and Work Product
5	6/5/2010	Bruce Wecker	Edward Balassanian; Spencer Hosie	Virendra Shekhawat	E-mail discussing WavSource sample	Attorney-Client and Work Product
6	6/7/2010	Virendra Shekhawat	Bruce Wecker		E-mail discussing and attaching MF summary and WFP summary	Attorney-Client and Work Product
7	6/7/2010	Bruce Wecker	Bruce Wecker; Virendra Shekhawat	Ganesh Balamitran (iRunway)	E-mail chain discussing two reports	Attorney-Client and Work Product
8	6/7/2010	Bruce Wecker	Scott W. Bradley; Edward Balassanian	Spencer Hosie; Virendra Shekhawat	E-mail discussing WFP patent	Attorney-Client and Work Product
9	6/8/2010	Spencer Hosie	Lynne Rose		E-mail chain, including Virendra Shekhawat (iRunway), discussing PDF regarding dynamic redirection of stream	Attorney-Client and Work Product
10	6/14/2010	Ganesh Balamitran	Bruce Wecker		E-mail discussing possible meeting	Attorney-Client and Work Product
				Bruce Wecker; Jerry Shaw (Hosie Rice); Ravi Upadrashta (iRunway)		
11	6/24/2010	Spencer Hosie	Ganesh Balamitran		E-mail chain regarding meeting	Attorney-Client and Work Product
12	6/29/2010	Ganesh Balamitran	Bruce Wecker		E-mail regarding possible meeting	Attorney-Client and Work Product
13	7/1/2010	Ganesh Balamitran	Bruce Wecker		E-mail chain regarding meeting and conflicts	Attorney-Client and Work Product

Implicit's Pre-Filing Investigation Privilege Log

14	7/2/2010	Ganesh Balamitran	Bruce Wecker		E-mail chain regarding meeting and conflicts	Attorney-Client and Work Product
15	7/2/2010	Ganesh Balamitran	Bruce Wecker; Virendra Shekhawat		E-mail chain regarding infringement scenarios	Attorney-Client and Work Product
16	7/6/2010	Bruce Wecker	Ganesh Balamitran		E-mail regarding Cisco and F5	Attorney-Client and Work Product
17	7/9/2010	Ganesh Balamitran	Bruce Wecker	Animesh Kumar (iRunway)	E-mail chain regarding an introduction to counsel	Attorney-Client and Work Product
18	7/13/2010	Virendra Shekhawat	Bruce Wecker	Ganesh Balamitran (iRunway); Bineet Bhasin (iRunway)	E-mail chain regarding '163 target identification status (F5; Cisco)	Attorney-Client and Work Product
19	7/12/2010	Virendra Shekhawat	Bruce Wecker	Ganesh Balamitran (iRunway); Bineet Bhasin (iRunway)	E-mail attaching analyses of Cisco IOS and Cisco QuantumFlow Processor, and F5	Attorney-Client and Work Product
20	7/14/2010	Virendra Shekhawat	Bruce Wecker	Ganesh Balamitran (iRunway); Bineet Bhasin (iRunway)	E-mail chain discussing Cisco IOS, Cisco QuantumFlow Processor, and F5	Attorney-Client and Work Product
21	7/14/2010	Virendra Shekhawat	Bruce Wecker	Ganesh Balamitran (iRunway); Bineet Bhasin (iRunway)	E-mail chain regarding '163 target identification status (F5; Cisco)	Attorney-Client and Work Product
22	7/14/2010	Bruce Wecker	Virendra Shekhawat		E-mail chain regarding '163 target identification status (F5; Cisco)	Attorney-Client and Work Product
23	7/27/2010	Spencer Hosie	Lynne Rose		E-mail chain regarding '163 target identification status (F5; Cisco)	Attorney-Client and Work Product
24	7/28/2010	Bruce Wecker	Virendra Shekhawat		E-mail attaching network management product analysis	Attorney-Client and Work Product
25	8/5/2010	Bruce Wecker	Virendra Shekhawat		E-mail regarding infringing Cisco products	Attorney-Client and Work Product
26	8/5/2010	Bruce Wecker	Virendra Shekhawat	Spencer Hosie	E-mail chain regarding Cisco Service Control Engine vs. '163	Attorney-Client and Work Product
27	8/5/2010	Bruce Wecker	Edward Balassanian	Virendra Shekhawat; Spencer Hosie	E-mail chain regarding Cisco Service Control Engine vs. '163	Attorney-Client and Work Product
28	8/5/2010	Edward Balassanian	Bruce Wecker	Virendra Shekhawat; Spencer Hosie	E-mail chain regarding Cisco Service Control Engine vs. '163	Attorney-Client and Work Product

Implicit's Pre-Filing Investigation Privilege Log

29	8/5/2010	Bruce Wecker	Edward Balassanian	Virendra Shekhawat; Spencer Hosie	E-mail chain regarding Cisco Service Control Engine vs. '163	Attorney-Client and Work Product
30	8/6/2010	Virendra Shekhawat	Bruce Wecker		E-mail chain regarding Cisco Service Control Engine vs. '163	Attorney-Client and Work Product
31	8/6/2010	Bruce Wecker	Virendra Shekhawat	Edward Balassanian; Spencer Hosie	E-mail chain regarding Cisco Service Control Engine vs. '163	Attorney-Client and Work Product
32	8/11/2010	Virendra Shekhawat	Bruce Wecker	Ganesh Balamitran; Bineet Singh; Virendra Shekhawat	E-mail chain regarding Cisco Service Control Engine vs. '163	Attorney-Client and Work Product
33	8/18/2010	Bruce Wecker	Virendra Shekhawat	Ganesh Balamitran	E-mail regarding HP Network products	Attorney-Client and Work Product
34	8/18/2010	Bruce Wecker	Virendra Shekhawat		E-mail regarding Citrix	Attorney-Client and Work Product
35	8/19/2010	Virendra Shekhawat	Bruce Wecker	Ganesh Balamitran; Virendra Shekhawat; Bineet Singh	E-mail chain regarding HP Networks products	Attorney-Client and Work Product
36	8/23/2010	Bruce Wecker	Virendra Shekhawat	Spencer Hosie	E-mail chain discussing and attaching F5 Application Traffic Management slide deck	Attorney-Client and Work Product
37	8/23/2010	Spencer Hosie	Lynne Rose		E-mail chain discussing and attaching F5 Application Traffic Management slide deck	Attorney-Client and Work Product
38	8/23/2010	Bruce Wecker	Lynne Rose		E-mail chain, including iRunway, discussing and attaching analysis on Citrix and HP products	Attorney-Client and Work Product
39	8/24/2010	Virendra Shekhawat	Spencer Hosie	Bruce Wecker; Ganesh Balamitran	E-mail chain discussing F5 claim chart	Attorney-Client and Work Product
40	8/26/2010	Virendra Shekhawat	Spencer Hosie	Bruce Wecker; Ganesh Balamitran; Bineet Singh	E-mail chain discussing and attaching F5 TMOS claim chart	Attorney-Client and Work Product
41	8/26/2010	Spencer Hosie	Virendra Shekhawat	Bruce Wecker; Ganesh Balamitran; Bineet Singh	E-mail chain discussing F5 TMOS claim chart	Attorney-Client and Work Product
42	8/26/2010	Spencer Hosie	Jerry Shaw; Lynne Rose		E-mail chain discussing and attaching F5 TMOS claim chart	Attorney-Client and Work Product
43	8/27/2010	Bruce Wecker	Virendra Shekhawat; Spencer Hosie	Bineet Singh; Ganesh Balamitran	E-mail chain discussing F5 claim chart	Attorney-Client and Work Product
44	8/27/2010	Spencer Hosie	Jerry Shaw; Lynne Rose		E-mail chain discussing and attaching F5 TMOS claim chart	Attorney-Client and Work Product

Implicit's Pre-Filing Investigation Privilege Log

45	8/27/2010	Edward Balassanian	Spencer Hosie	Virendra Shekhawat; Bruce Wecker	E-mail chain discussing F5 claim chart	Attorney-Client and Work Product
46	8/27/2010	Edward Balassanian	Spencer Hosie	Virendra Shekhawat; Bruce Wecker	E-mail chain discussing F5 claim chart	Attorney-Client and Work Product
47	8/27/2010	Bruce Wecker	Edward Balassanian; Spencer Hosie	Virendra Shekhawat	E-mail chain discussing F5 claim chart	Attorney-Client and Work Product
48	8/27/2010	Bruce Wecker	Edward Balassanian	Spencer Hosie; Virendra Shekhawat	E-mail chain discussing F5 claim chart	Attorney-Client and Work Product
49	8/27/2010	Edward Balassanian	Bruce Wecker	Spencer Hosie; Virendra Shekhawat	E-mail chain discussing F5 claim chart	Attorney-Client and Work Product
50	8/29/2010	Virendra Shekhawat	Bruce Wecker; Edward Balassanian	Spencer Hosie	E-mail chain discussing F5 claim chart	Attorney-Client and Work Product
51	8/29/2010	Virendra Shekhawat	Bruce Wecker; Spencer Hosie	Bineet Singh; Ganesh Balamitran; Edward Balassanian	E-mail chain discussing F5 claim chart	Attorney-Client and Work Product
52	8/30/2010	Virendra Shekhawat	Edward Balassanian; Spencer Hosie	Bruce Wecker; Bineet Singh	E-mail chain discussing F5 claim chart	Attorney-Client and Work Product
53	8/30/2010	Spencer Hosie	Virendra Shekhawat	Edward Balassanian; Bruce Wecker; Bineet Singh	E-mail chain discussing F5 claim chart	Attorney-Client and Work Product
54	8/30/2010	Edward Balassanian	Virendra Shekhawat	Spencer Hosie; Bruce Wecker	E-mail chain discussing F5 claim chart	Attorney-Client and Work Product
55	9/1/2010	Bineet Singh	Bruce Wecker	Virendra Shekhawat; Jason Smith; Spencer Hosie	E-mail chain regarding VMware ACE virtual desktop management features	Attorney-Client and Work Product
56	9/1/2010	Bruce Wecker	Bineet Singh	Virendra Shekhawat; Jason Smith; Spencer Hosie	E-mail chain regarding VMware ACE virtual desktop management features	Attorney-Client and Work Product
57	9/1/2010	Bruce Wecker	Virendra Shekhawat	Ganesh Balamitran	E-mail regarding Juniper	Attorney-Client and Work Product
58	9/2/2010	Virendra Shekhawat	Bruce Wecker	Ganesh Balamitran	E-mail chain regarding Juniper	Attorney-Client and Work Product

Implicit's Pre-Filing Investigation Privilege Log

59	9/3/2010	Virendra Shekhawat	Spencer Hosie	Bruce Wecker	E-mail regarding Alcatel Lucent Omni Access research	Attorney-Client and Work Product
60	9/3/2010	Virendra Shekhawat	Bruce Wecker		E-mail chain regarding Juniper	Attorney-Client and Work Product
61	9/4/2010	Edward Balassanian	Virendra Shekhawat	Spencer Hosie	E-mail regarding VMware	Attorney-Client and Work Product
62	9/6/2010	Virendra Shekhawat	Edward Balassanian	Spencer Hosie; Ganesh Balamitran; Bruce Wecker	E-mail chain discussing and attaching VMware analysis	Attorney-Client and Work Product
63	9/6/2010	Virendra Shekhawat	Spencer Hosie	Bruce Wecker; Edward Balassanian; Ganesh Balamitran	E-mail chain regarding Alcatel Lucent Omni Access research	Attorney-Client and Work Product
64	9/6/2010	Edward Balassanian	Virendra Shekhawat	Spencer Hosie; Ganesh Balamitran; Bruce Wecker	E-mail chain regarding VMware	Attorney-Client and Work Product
65	9/6/2010	Spencer Hosie	Lynne Rose		E-mail chain, including iRunway, discussing and attaching VMware analysis	Attorney-Client and Work Product
66	9/7/2010	Virendra Shekhawat	Edward Balassanian	Spencer Hosie; Bruce Wecker; Ganesh Balamitran	E-mail chain regarding VMware	Attorney-Client and Work Product
67	9/9/2010	Virendra Shekhawat	Edward Balassanian	Spencer Hosie; Bruce Wecker; Ganesh Balamitran	E-mail chain regarding VMware	Attorney-Client and Work Product
68	9/9/2010	Edward Balassanian	Virendra Shekhawat	Spencer Hosie	E-mail regarding Juniper JUNOS	Attorney-Client and Work Product
69	9/9/2010	Edward Balassanian	Spencer Hosie	Virendra Shekhawat	E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product
70	9/9/2010	Edward Balassanian	Spencer Hosie	Virendra Shekhawat	E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product
71	9/9/2010	Virendra Shekhawat	Spencer Hosie	Edward Balassanian; Bruce Wecker; Ganesh Balamitran	E-mail chain regarding VMWare and VMSafe	Attorney-Client and Work Product
72	9/9/2010	Virendra Shekhawat	Edward Balassanian; Spencer Hosie		E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product

Implicit's Pre-Filing Investigation Privilege Log

73	9/13/2010	Virendra Shekhawat	Spencer Hosie	Edward Balassanian; Bruce Wecker	E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product
74	9/14/2010	Virendra Shekhawat	Spencer Hosie; Edward Balassanian	Bruce Wecker	E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product
75	9/14/2010	Edward Balassanian	Virendra Shekhawat	Spencer Hosie; Bruce Wecker	E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product
76	9/14/2010	Spencer Hosie	Virendra Shekhawat	Edward Balassanian; Bruce Wecker	E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product
77	9/14/2010	Edward Balassanian	Spencer Hosie	Virendra Shekhawat; Bruce Wecker	E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product
78	9/14/2010	Spencer Hosie	Edward Balassanian	Virendra Shekhawat; Bruce Wecker	E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product
79	9/14/2010	Spencer Hosie	Edward Balassanian	Virendra Shekhawat; Bruce Wecker	E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product
80	9/14/2010	Edward Balassanian	Virendra Shekhawat	Spencer Hosie; Bruce Wecker	E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product
81	9/14/2010	Spencer Hosie	Edward Balassanian	Virendra Shekhawat; Bruce Wecker	E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product
82	9/14/2010	Edward Balassanian	Spencer Hosie	Virendra Shekhawat; Bruce Wecker	E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product
83	9/14/2010	Spencer Hosie	Edward Balassanian	Virendra Shekhawat; Bruce Wecker; George Bishop (Hosie Rice); Diane Rice (Hosie Rice)	E-mail chain regarding Juniper JUNOS	Attorney-Client and Work Product
84	9/16/2010	Bruce Wecker	Edward Balassanian	Spencer Hosie; Virendra Shekhawat	E-mail regarding Juniper	Attorney-Client and Work Product
85	9/16/2010	Virendra Shekhawat	Spencer Hosie; Bruce Wecker; Edward Balassanian		E-mail chain regarding Junos OS platform	Attorney-Client and Work Product
86	9/16/2010	Edward Balassanian	Spencer Hosie		E-mail chain regarding Junos OS platform	Attorney-Client and Work Product
87	9/16/2010	Spencer Hosie	Virendra Shekhawat	Bruce Wecker; Edward Balassanian	E-mail chain regarding Junos OS platform	Attorney-Client and Work Product

Implicit's Pre-Filing Investigation Privilege Log

88	9/17/2010	Virendra Shekhawat	Spencer Hosie	Edward Balassanian	E-mail chain regarding Juniper	Attorney-Client and Work Product
89	9/17/2010	Edward Balassanian	Virendra Shekhawat	Spencer Hosie	E-mail chain regarding Juniper	Attorney-Client and Work Product
90	9/17/2010	Edward Balassanian	Virendra Shekhawat; Bruce Wecker; George Bishop		E-mail chain regarding Juniper	Attorney-Client and Work Product
91	9/17/2010	Spencer Hosie	Virendra Shekhawat	Edward Balassanian; Bruce Wecker; George Bishop; Ganesh Balamitran	E-mail chain discussing HP charts	Attorney-Client and Work Product
92	9/17/2010	Spencer Hosie	Lynne Rose		E-mail chain, including iRunway, discussing and attaching claim chart for HP Tipping Point IPS	Attorney-Client and Work Product
93	9/17/2010	Spencer Hosie	Virendra Shekhawat	Edward Balassanian; Bruce Wecker; George Bishop; Ganesh Balamitran	E-mail chain discussing claim chart for HP Tipping Point IPS	Attorney-Client and Work Product
94	9/17/2010	Edward Balassanian	Spencer Hosie	Virendra Shekhawat; Bruce Wecker; George Bishop (Hosie Rice); Ganesh Balamitran	E-mail chain discussing claim chart for HP Tipping Point IPS	Attorney-Client and Work Product
95	9/17/2010	Virendra Shekhawat	Spencer Hosie	Edward Balassanian; Bruce Wecker; George Bishop; Ganesh Balamitran	E-mail chain discussing HP charts and ComWare	Attorney-Client and Work Product
96	9/17/2010	Bruce Wecker	Virendra Shekhawat	Edward Balassanian; Spencer Hosie	E-mail discussing and attaching HP IMC QoS vs. '163 claim chart	Attorney-Client and Work Product
97	9/20/2010	Spencer Hosie	Lynne Rose	Janine DeAndre (Hosie Rice)	E-mail chain, including iRunway, discussing and attaching HP IMC QoS vs. '163 claim chart	Attorney-Client and Work Product
98	9/20/2010	Spencer Hosie	Lynne Rose		E-mail chain, including iRunway, discussing and attaching Comware platform software overview	Attorney-Client and Work Product

Implicit's Pre-Filing Investigation Privilege Log

99	9/20/2010	Spencer Hosie	Lynne Rose		E-mail chain, including iRunway, regarding HP charts	Attorney-Client and Work Product
100	9/20/2010	Spencer Hosie	Lynne Rose		E-mail chain, including iRunway, discussing and attaching HP's Tipping Point Intrusion Prevention System (IPS) claim chart	Attorney-Client and Work Product
101	9/20/2010	Virendra Shekhawat	Spencer Hosie	Bruce Wecker; Edward Balassanian	E-mail chain regarding Juniper	Attorney-Client and Work Product
102	9/20/2010	Bruce Wecker	Lynne Rose		E-mail chain, including iRunway, discussing and attaching Cisco claim charts	Attorney-Client and Work Product